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95TH CONGRESS
2d Session

SENATE

REPORT
No. 95-989

BANKRUPTCY REFORM ACT OF 1978

JULY 14 (legislative day, MAY 17), 1978.—Ordered to be printed

Mr. DECONCINI, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 2266]

The Committee on the Judiciary, to which was referred the bill, S. 2266, to establish a uniform law on the subject of bankruptcies, having considered the same, reports favorably thereon and recommends that the bill in the nature of a substitute do pass. The committee amendment strikes out all after the enacting clause and inserts a new text, which appears in italic type in the reported bill.

PURPOSE OF THE BILL

The purpose of the bill is to modernize the bankruptcy law by codifying a new title 11 that will embody the substantive law of bankruptcy and to make extensive amendments to title 28, Judiciary and Judicial Procedure, that will encompass the structure of the revised bankruptcy courts.

PURPOSE OF THE AMENDMENT

The amendment in the nature of a substitute reflects, testimony received by the committee and the changes that resulted. The purpose of the revised bill remains to modernize the bankruptcy law.

INTRODUCTION

In 1970, Congress created the Commission on the Bankruptcy Laws of the United States to study and recommend changes in bankruptcy laws. The Commission became operational in June 1971, and filed its final report with Congress on July 30, 1973. Its report was in two parts. Part I contained the Commission's findings and recommendations.

Part II contained a draft of a bill to implement those recommendations. Senator Quentin Burdick, Chairman of the Subcommittee on Improvements in Judicial Machinery and a member of the Commission, and Senator Marlow Cook, a member of the Commission, introduced that bill in the 93d Congress as S. 4026. No action was taken on the bill during the 93d Congress.

In the 94th Congress the Commission bill was again introduced by Senator Burdick as S. 236. Senator Burdick also introduced an alternative to the Commission bill that had been drafted by representatives of the National Conference of Bankruptcy Judges. The Judge's bill, S. 235, which differed in several major aspects from the Commission bill.

Hearings on both bills commenced in late February of 1975 and continued through November of 1975. All interested parties were invited to give testimony on the bills. The Subcommittee on Improvements in Judicial Machinery heard from several hundred interested parties and had nearly 80 witnesses personally testify over 24 days of hearings. The hearings covered all aspects of bankruptcy law. Testimony was heard on the structure of the new bankruptcy courts, the relationships of laws to bankruptcies, tax aspects, consumer bankruptcies, business reorganizations, railroad reogranizations, and the effect and interaction of the securities laws in bankruptcy cases.

Throughout the remainder of 1975 and all of 1976 the subcommittee continued to gather information and to begin work on a draft bill; however, no bill was reported to the full Judiciary Committee during the 94th Congress. Introduced in the House at this time were parallel bills to S. 235 and S. 236 entitled H.R. 31 and 32, and during the 94th Congress the House also held extensive hearings on the bankruptcy reform bills. The House culminated its actions with the introduction early in the 95th Congress of H.R. 6 which was amended and reintroduced as H.R. 8200. That bill was passed by the House of February 1, 1978.

S. 2266, a bill, the analogous bill to H.R. 8200, was introduced by Senators DeConcini and Wallop on November 1, 1977. The Subcommittee on Improvements in Judicial Machinery conducted further hearings in late November and early December, receiving testimony from nearly 60 witnesses and again receiving several hundred written statements and comments with regard to the bill. Subcommittee amendments as a result of the hearings, statements, and comments were made to the bill over the next five months and these efforts culminated in the reporting, by the subcommittee, on May 17, 1978, of a bill in the nature of a substitute offered. The report of the vote of the subcommittee was three in favor, none opposed, and one not voting.

The major purpose of this bill is the modernization of the bankruptcy laws. The substantive law of bankruptcy and the current bankruptcy system were designed in 1898, and underwent the last significant overhaul in 1938, nearly 40 years ago. Since that time there have been vast changes in the law of debtor-creditor relations, including the widespread adoption of the Uniform Commercial Code in the early 1960's and the vast spread of consumer credit. There has been a steady growth in the number of bankruptcies, both consumer and the more complicated business reorganization cases, over the last 20 years, and this

steady growth has led to great stresses and strains in the bankruptcy system. The bankruptcy referee has gradually taken over the prime responsibility for the operation of the system from the Federal district judges.

The hearings before the Subcommittee on Improvements in Judicial Machinery confirmed that revision was necessary, and the bill is the attempt to upgrade and modernize our bankruptcy courts and also the law which they must apply in the bankruptcy area.

The bankruptcy bill is divided into four titles. Title I, consisting only of Section 101, codifies and enacts Title 11 of the United States Code entitled "Bankruptcy." Title 11 of the code will contain the substantive, and much of the procedural, law of bankruptcy.

Title II of the bill is a series of amendments to title 28 of the United States Code, entitled "Judicial Code and Judiciary," and it is to this title that a series of amendments are made establishing the bankruptcy courts, giving them their jurisdiction and providing them with staff, the appellate route, and setting out other integral portions of the bankruptcy system.

Title III of the bill contains amendments to other laws of the United States. Many of these amendments are technical and conforming in nature. Some, however, rationalize the status of liens in bankruptcy cases, to eliminate special priorities for various creditors, and to prevent discrimination against former bankrupts. All priorities will, under the bill, be contained in Title 11 of the United States Code itself, instead of being scattered throughout Federal law. The transition provisions are found in title IV. These include a repeal of the Bankruptcy Act, rules for the governance of the bankruptcy system during a period of transition to the new court system, and provisions for a study during transition to determine the number of bankruptcy judges needed under the new system.

The proposed title II of the United States Code is divided into seven chapters: 1, 3, 5, 7, 9, 11, and 13. Chapter 1 (General Provisions), chapter 3 (Case Administration), and chapter 5 (Creditors, the Debtor and the Estate), apply generally to all cases under chapter 7 (Liquidation), chapter 11 (Reorganization), and chapter 13 (Adjustment of Debts of an Individual with Regular Income). Limited portions of chapters 1, 3, and 5 apply to cases under chapter 9 (Adjustment of Debts of a Municipality).

Cases are filed in only one of the four operative chapters, 7, 9, 11, or 13, though the bill does provide for the conversion of a case from one chapter to another. In addition, there are special subchapters in chapters 7 and 11 for certain kinds of debtors. Chapter 7 contains two subchapters to handle the unique problems of stock brokers and commodity brokers. Chapter 11 contains one subchapter for railroad reorganizations. The remainder of those chapters, 7 and 11, apply in the special cases as well. Special subchapters provide supplementary rules and procedures.

Chapter 11, Reorganization, is primarily designed for businesses, although individuals are eligible for relief under the chapter. The procedures of chapter 11, however, are sufficiently complex that they will be used only in a business case and not in the consumer context. Chapter 13, Adjustment of Debts for Individuals with Regular In-

come, is limited exclusively to individuals, but permits small sole proprietorships to use the chapter. The bill places a debt ceiling on individuals seeking to use chapter 13.

Similarly, the provisions in the generally applicable chapters, 1, 3, and 5 are not divided along consumer business lines. Specific provisions do have more frequent applicability in consumer or business cases, however, and some provisions are limited only to use by individuals.

TITLE I

Chapter 1—General Provisions

Chapter 1 is the General Provision chapter. It contains sections such as definitions, rules of construction, guidelines as to the applicability and interrelationship of the various chapters and subchapters, and identification of who may be debtors under each chapter. It also sets out the ground rules for applicability of the later chapters and is really more a procedural chapter than one setting out substantive rights of the parties.

Chapter 3—Case Administration

Voluntary cases are commenced by the filing of a petition in the office of a bankruptcy judge. Current law is charged to allow for a joint petition in the instance of a husband and wife who both wish to file. Involuntary cases may be filed only under chapter 7 or 11 of the title.

An involuntary case may be filed by three or more creditors having claims aggregating at least $5,000 unless there are fewer than twelve creditors, in which case one creditor holding a claim of at least $5,000 may file. The requirement for filing an involuntary petition is that the debtor is generally unable to pay, or has failed to pay a major portion of, his debts as they become due or, that, within 90 days before the filing of a petition, a custodian has been appointed for the debtor's property. The inability or failure to pay debts test is a change from current law which requires "balance sheet" insolvency.

Trustees in cases under title 11 will continue as in present law to be private individuals qualified for the performance of such duties.

As under present law, within a reasonable time after the order for relief in a bankruptcy case, there shall be a meeting of creditors at which the court will preside. The court's presence is necessary to impress upon the debtor the seriousness of the proceedings and to rule upon questions that may arise at such meetings.

The filing of a bankruptcy petition or any other petition commencing a case under this title automatically stays the enforcement of any lien against the debtor's property or to recover any claim owed by the debtor. The automatic stay, by its nature, seriously affects the rights of all of the debtor's creditors. As a result, certain limitations are placed upon the continuance of the stay. Adequate protection in the form of either cash payments or a replacement lien must be provided the creditor whose collateral is decreasing in value or is being consumed during the stay. Moreover, any creditor may request the court for relief from

such stay, which request shall be given calendar priority by the court. In cases where the single asset of the debtor is real property, the court shall grant relief from the stay if the debtor has no equity in the collateral, thereby allowing the creditor to proceed with his foreclosure. If equity is present in property that is not needed for a reorganization, the court must order the property sold, so that the creditor can be paid.

A troubling concept, and the subject of much litigation in recent chapter cases, has been the use by the debtor of collateral during the reorganization. Under the bill, the debtor may use inventory or accounts receivable collateral during the ordinary course of the business without court approval. However, before the debtor may use cash collateral, defined as cash, negotiable instruments, documents of title, securities, deposit accounts, or a cash equivalent, there must be a hearing and finding by the court. Such a finding may be conditioned upon the providing of adequate protection by periodic cash payments or a replacement lien.

An important exception to the trustee's rights to use, sell, or lease property of the estate is in the instance of joint ownership of public utilities. The trustee is unable to sell the interest of a co-owner in a bankruptcy case, if the nonbankrupt co-owner's interest is related to the service of a public utility.

Provisions are made under the bill for a trustee to obtain credit while he operates the business of the debtor. The trustee may be authorized to incur debts having priority over existing liens on the property of the estate. Such a debt may be incurred, however, only after notice and hearing by the court and only if adequate protection is provided to the other holders of security interests in that property of the debtor.

The rights of the trustee to reject executory contracts and unexpired leases provided by current law is continued in the bill. In a liquidation case, if the trustee does not assume or reject such a contract or a lease within sixty days after the order of relief, such contract is deemed rejected. Under chapters 9, 11, or 13 of this title, the court, upon request of any party to such contract or lease, may order the trustee to set a time in which to assume or reject such contract or lease. The right of a trustee to assume or reject executory contracts does not include the right to assume a loan commitment.

Chapter 5—Creditors, Debtor, and the Estate

Chapter 5 reflects the policy of the revision of the Bankruptcy Act to include all of the property of the debtor in the bankruptcy case and to allow the trustee more easily to recover property that may have been transferred by the debtor. As a result of these changes the amounts that will be returned to all creditors can be greater.

A new section requires secured creditors to file claims, allowing an early evaluation to determine the secured and unsecured portion of the claim.

The priority section is greatly broadened for employees and consumers and reduced for Government claims. Under current law, employees currently are allowed a $600 priority for unpaid wages, which does not include any claims for contributions to employee benefit plans such as pension, health, and life insurance plans. The bill's priority

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section will raise the $600 limit to $1800 and create an additional, separate priority of up to $1800 for fringe benefits. Any one employee's combined priority for wages and fringe benefits, however, cannot exceed $1800. A new priority for consumer creditors who had deposited money in connection with the purchase, lease, or rental of property is also created. The Government's general priority for nontax claims, currently the fifth priority in section 64 of the Bankruptcy Act, is abolished.

Current law is retained in the area of exempt property, which is property that the debtor may retain after bankruptcy for a fresh start. For this purpose, current law adopts the exemption law of the State in which the debtor is a resident. H.R. 8200, the House version of this bill, contains a provision for exemptions that would allow the debtor to choose between State law or Federal exemptions as set by the bill, whichever is higher. H.R. 8200 would establish 11 categories of property for the Federal exemption, among which is a homestead exemption of $10,000. Such a provision in joint cases would result in a husband choosing State exemptions while a wife might choose Federal exemptions. Together, they could thus retain after bankruptcy, very substantial amounts of property, while their debts would have been discharged. The committee feels that the policy of the bankruptcy law is to provide a fresh start, but not instant affluence, as would be possible under the provisions of H.R. 8200. Moreover, current law has allowed the several State legislatures flexibility to meet the needs and fresh-start requirements of the debtors of their particular States.

As with current law, certain debts, particularly those obtained by false pretenses, false representations, or actual fraud, are excepted from discharge. However, the committee received considerable testimony that creditors have used these exceptions to threaten debtors into settlements which the debtors agree to in order to save attorneys' fees that would be incurred in litigating the issue of dischargeability. The committee opposes this practice and has included a provision that in such a case where the court finds that the objection to the discharge of the debt by the creditor was frivolous, or not brought in good faith, the court may award attorneys' fees and costs to the debtor.

Trustees have had great difficulty in recovering preferences that have been made to creditors prior to the bankruptcy proceeding because of the current requirement that the creditor have reasonable cause to believe that the debtor was insolvent at the time the preference was received. Extensive litigation is often required to prove the basis for such belief. The preference section is changed from current law to solve this problem by the addition of a presumption that during the 90 days preceding bankruptcy the debtor will be presumed to have been insolvent. The preference period is reduced from 4 months to 90 days.

Chapter 7—Liquidation

The liquidation procedures of the bill track much of current law. A change from current law requires the appointment of an interim trustee promptly after the order for relief. Presently, trustees are not elected until the first meeting of creditors. Provision is made for the election by the creditors, or appointment by the court, of a trustee to succeed the interim trustee at the first meeting of creditors. A creditors' committee may be elected by the creditors at the first meeting of

creditors, which committee may have not fewer than three members and not more than eleven members.

The trustee is authorized to operate the business of the debtor for a limited period if the operation is in the best interest of the estate and consistent with the order and liquidation of the estate.

A new section is added to aid the consumer debtor in making a fresh start after bankruptcy. The provision allows the debtor to redeem tangible personal property from a creditor's nonpurchase money security interest by paying the creditor the fair market value of the property for the claim or the amount of the claim whichever is less. This provision will aid debtors in retaining property such as household goods that would otherwise be turned over to creditors.

At the heart of the fresh start provisions of the bankruptcy law is section 727 covering discharge. The discharge provisions require the court to grant the debtor a discharge of all his debts except for very specific and serious infractions on his part. A change from current law will prevent corporations from being discharged in liquidation cases. Corporations are not in the same situation as individual debtors, and the discharge of a corporation promotes trafficking in corporate shells, a form of bankruptcy fraud.

Special provisions are made for the liquidation of stockbrokerage firms. The Securities Investor Protection Corporation (SIPC) is charged by law with the protection of customers in such cases. If SIPC wishes to take charge of the liquidation, the bankruptcy case is suspended, and if SIPC completes the liquidation, the bankruptcy case is dismissed.

Special provision is also made for the bankruptcy of commodity futures brokers. Since the first comprehensive bankruptcy legislation was enacted in 1800, bankruptcy laws have never specifically addressed the unique problems raised by commodity broker bankruptcies. With no cohesive policy for guidance, courts dealing with commodity broker bankrutcies have applied existing laws which are not necessarily consistent with the structure of, and may be potentially disruptive of, commodity futures, options, and leverage markets. The rapid growth of the commodity futures markets in recent years has made the development of statutory guidelines for commodity broker insolvencies all the more imperative. According to the Commodity Futures Trading Commission (the "Commission" or "CFTC"), "[t]he Commission now regulates an industry where the value of commodities for which contracts were traded in 1977 exceeds one trillion dollars. Currently, there are 62 active futures contracts trading 37 commodities on 10 exchanges. The volume of exchange trading in 1977 was nearly 43 million contracts, reflecting an overall growth rate of 55 percent since the Commission's inception [in 1974] and 16 percent growth rate in 1977 alone." Likewise, leverage contract markets have grown rapidly during the past few years. Further, according to the CFTC, from 1973 through 1977, at least 11 leverage contract firms have failed, resulting in at least $17.5 million in customer losses. Although commodity options trading has been suspended by the CFTC, there has been some indication that exchange-traded options may be permitted in the future.

There are several fundamental principles established by the commodity broker subchapter that deserve attention. First, customer

claims are granted the highest priority against the bankrupt's estate. This policy maintains consistency with the Commodity Exchange Act, which establishes customer protection as a primary objective [2] and should promote customer confidence in commodity markets generally.

A second basic objective of this subchapter is the protection of commodity market stability. Protection of market stability during a commodity broker insolvency is more difficult in the commodities markets than in other markets. Commodity futures, options, and leverage contracts all have limited duration. In addition, gains and losses on open positions in the futures markets are paid out on a daily basis through variation margin payments. Thus, the trustee of an insolvent commodity broker does not have the luxury of an extended period within which to analyze the debtor's business and determine the best course of action. Delay by the trustee can result in default in making the daily variation margin payments, or default on delivery, either of which could have a ripple effect that disrupts the entire market. Further, abrupt actions by the trustee could seriously disrupt orderly trading, resulting in substantial losses to the bankrupt, its customers, and other market participants.

For these reasons the commodity broker subchapter strongly encourages the immediate transfer of customer accounts from the bankrupt to a solvent commodity broker. Such transfers should have no immediate adverse impact on the market, yet they minimize the possibility of default on margin payments and on delivery.

Another policy established by this subchapter is that margin payments made to clearing organizations are not voidable by the trustee in bankruptcy. In addition, margin payments made by commodity brokers (but not by clearing organizations) to some entity other than a clearing organization are not voidale unless the trustee can establish certain conditions have been met.

The commodity broker subchapter provides only a framework within which commodity broker liquidations are to be administered. Due to the germinal state of regulation of the commodities industry, the subchapter does not provide detailed rules to cover every contingency. Instead, general rulemaking authority has been delegated to the CFTC with respect to the contents and determination of net equity; definition of "customer property," "member property," "commodity options dealer," "commodity contract," and "clearing organization"; the question of which property or contracts will be specifically identifiable to a particular customer in a specific capacity; the method by which the business of the debtor is to be conducted or liquidated; and the parties to which customer property and contracts may be transferred. This rulemaking authority is to be exercised within the bounds of the policies and framework established by this subchapter.

Chapter 9—Adjustment of Debts of A Municipality

Chapter 9, providing for the adjustment of debts of a municipality, was considered at great length by the Congress during 1975–76, primarily because of the New York City fiscal crisis. Both Houses of

[2] *See, e.g.*, Commodity Exchange Act sec. 4d(2), 7 U.S.C. sec. 6d(2) (1977).

Congress held extensive hearings on the chapter resulting in Public Law 94–260, which was signed into law on April 8, 1976.

Since that time, there have been no developments in municipal arrangement proceedings to require any new revision of the law. Thus, the bill tracks the provisions of Public Law 94–260 with stylistic changes to conform to the title.

The creditor protection provision, requiring a municipality to attempt a good faith negotiation with its creditors before a petition is filed, is retained. The only deviation from current law is in the area of setoffs where the provisions of chapter 9 conform to the setoff provisions generally applicable to the title.

Chapter 11—Reorganization

Chapter 11 deals with the reorganization of a financially distressed business enterprise, providing for its rehabilitation by adjustment of its debt obligations and equity interests. It should be distinguished from the bankruptcy liquidation under chapter 7 or the adjustment of the debts of an individual with regular income under chapter 13.

Chapter 11 replaces chapters X, XI and XII of the Bankruptcy Act, Chapter 11 also includes special provisions for railroads in view of the impact of regulatory laws on railroad debtors and replaces section 77 of the Bankrupcy Act. A single chapter for all business reorganizations will simplify the law by eliminating unnecessary differences in detail that are inevitable under separately administered statutes.

Business reorganizations have been governed principally by chapters X and XI, both of which have been adopted by the Congress as part of the bankruptcy reforms in 1938. These chapters were not intended to be alternate paths of reorganization; they were to be mutually exclusive. Chapter X was meant for the reorganization of public companies and chapter XI for the rehabilitation of small and privately owned businesses.

That schematic design was well conceived, but flawed somewhat by the failure to include a definition of a "public company." As a result, considerable litigation developed, mostly on the initiative of the Securities and Exchange Commission, over whether a case belonged in chapter X or chapter XI. This issue came to the Supreme Court in three cases, the last one in *SEC* v. *American Trailer Rentals, Inc.*, 379 U.S. 594 (1965), but the Court did not enunciate a hard-and-fast rule for all cases. Although it announced some guidelines, management and creditors of large public companies have continued to resort to chapter XI.

The single chapter for business reorganization, which the bill provides, will eliminate unprofitable litigation over the preliminary issue as to which of the two chapters apply. In addition, the bill provides in section 1101(3) a definition of "public company," and to that definition are related a few provisions expressly designed for the public company, such as the mandatory appointment of a trustee, the advisory role of the Securities and Exchange Commission, the fair and equitable standard for plans of reorganization, and special requirements for solicitation of acceptance by security holders. These provisions constitute the basic safeguards for public investors that for 40 years have been part of chapter X, and are incorporated in the bill to

serve the same essential purpose. The differentiating standard is not whether the debtor is large or small. It is rather whether the debtor is a public company, as defined.

Reorganization, in its fundamental aspects, involves the thankless task of determining who should share the losses incurred by an unsuccessful business and how the values of the estate should be apportioned among creditors and stockholders. In a large public company, whose interests are diverse and complex, the most vulnerable today are public investors who own subordinated debt or equity securities. The bill, like chapter X, is designed to counteract the natural tendency of a debtor in distress to pacify large creditors, with whom the debtor would expect to do business, at the expense of small and scattered public investors.

Statistical information provided by the SEC (Hearings before Subcommittee on Improvements in Judicial Machinery of the Committee on the Judiciary, U.S. Senate, on S. 2266 and H.R. 8200, 95th Cong., 1st Session, hereinafter (Senate hearings, pp. 623, 632)), indicates that the overwhelming majority of reorganization cases would not involve public companies as defined in section 1101(3) of the bill. Reorganization of such companies would be governed by procedures and standards that are drawn and adapted from what is now chapter XI. But the few exceptions—the public companies—are of vast importance. As the SEC noted (Senate hearings, supra) public companies, as defined in section 1101(3), represented only between one-half and one percent of the business reorganization cases in chapters X and XI in the years 1975–77. But these cases, though few in number, represented over 90 percent of the total assets and liabilities of all cases with a substantial public investor interest. It is only for such public companies that the bill reenacts the few basic safeguards of chapter X. In all other respects, the administration of debtor estates for public companies will be governed by the provisions in chapters 3, 5 and 11 that are intended for all cases, public and non-public companies alike.

The Committee believes that it should be emphasized that investor protection is most critical when the company in which the public invested is in financial difficulties and is forced to seek relief under the bankruptcy laws. A fair and equitable reorganization, as provided in the bill, is literally the last clear chance to conserve for them values that corporate financial stress or insolvency have placed in jeopardy. As public investors are likely to be junior or subordinated creditors or stockholders, it is essential for them to have legislative assurance that their interests will be protected. Such assurance should not be left to a plan negotiated by a debtor in distress and senior or institutional creditors who will have their own best interest to look after. Commenting on the need and importance of a disinterested trustee in public cases, Harold J. Tyler, Jr., a distinguished former Federal judge experienced in bankruptcy reorganization, said (Senate Hearings, supra, p. 900) that only the trustee "can be expected to look out for the debt and equity holds. Creditors and their lawyers usually do not do so, and debtors in possession are inclined to think first of satisfying their big creditors."

The pre-chapter-X system of reorganization failed to serve the needs of public investors and for that reason such failure was decisively rejected by the 75th Congress. Such a system all too often resulted in reorganizations that were unfair to public investors, who lacked essential bargaining power, and that frequently perpetuated an unsound financial structure and, perhaps, an unworthy management. A single chapter, without the special standards for the public company, would not serve the public interest. As the SEC said in its report on the bill, "Our experience with both chapters X and XI leaves no doubt that the abusive practices prevailing prior to 1938 in committee-dominated reorganization are as attractive today as they were then." (Senate Hearings, *supra*, p. 622).

Subchapter IV of chapter II deals with the reorganization of railroads. Under present law, railroad reorganizations are conducted under section 77 of the Bankruptcy Act, a statute enacted under the pressure of widespread railroad receiverships in the 1930's and essentially unchanged since 1935. Under the bill, the often complex and time consuming dichotomy between railroad and other business reorganizations is eliminated by incorporating railroad reorganizations into the pattern of business reorganizations generally, and including in subchapter IV only those additional provisions which are necessary to reflect the special characteristics of railroad reorganizations.

The incorporation of railroad reorganizations into the general reorganization provisions of the bill eliminates the cumbersome and duplicative procedure of section 77 under which plans of reorganization shuttled back and forth between the Interstate Commerce Commission (the "Commission") and the courts and proceedings were inevitably more time consuming and expensive. Under the bill, the bankruptcy court, rather than the Commission, assumes the primary responsibility for the reorganization proceeding. However, since a plan of reorganization for a railroad may propose changes in transportation patterns or operation by, among other things, granting operating rights over, or transferring, the debtor's rail lines, the bill retains the Commission's jurisdiction with respect to such proposals. The subchapter requires that such proposals be referred to the Commission for its approval, disapproval, or modification and requires the reorganization court to give binding effect to the Commission's findings on such aspects of a plan. The subchapter also specifies that the trustee is subject to the Interstate Commerce Act, and to lawful orders of the Interstate Commerce Commission, the Department of Transportation, and State or local regulatory bodies, with court approval required if the orders require the expenditure of money, except for the payment of interline freight and passenger accounts and per diem accounts (including incentive per diem) for which no court approval is required.

Special provisions are also included dealing with equipment financing, limiting the extent to which the trustee may disaffirm collective bargaining contracts, and specifying the consequences of the rejection by the trustee of a lease of a line of railroad. The judicial panel on multidistrict litigation is authorized to transfer on consolidate cases pending in different courts.

The subchapter emphasizes that the trustee in a railroad reorganization, in carrying out his responsibilities, must take into consideration the "public interest" in the preservation of rail service. At the same time, the subchapter recognizes, as section 77 does not, that there may be cases in which a railroad cannot be reorganized, and should be liquidated. The subchapter does not create a mandatory deadline within which a reorganization must be accomplished, but it requires the court to consider liquidation if no reorganization plan has been confirmed within 5 years from the date when the original petition was filed. It is expected that in most such cases the court will order liquidation which will prevent repetition of the lengthy proceedings that have occurred to date.

In the case of a railroad being administered under title 11 the necessity to stem the bankrupt carrier's cash drain requires expeditious treatment of abandonment applications. The subchapter provides that the court rather than the Commission has the authority to authorize abandonments or discontinuances of rail service. After filing of the applications by the trustee with the Commission, the court establishes a time period within which the Commission must report its findings to the court. The Commission in its advisory role before the court represents the "public interest," while the trustee and creditors represent the interest of the debtor's investors. The court may authorize abandonments if it finds the abandonment is consistent with the "public interest" and in the best interest of the estate, or essential to formulation of the plan.

Chapter 13—Adjustment of Debts of An Individual With Regular Income

Chapter XIII of the present Bankruptcy Act has been one of the least understood and most erratically applied of all federal statutes dealing with bankruptcy or social welfare. In theory, the basic purpose of Chapter XIII has been to permit an individual to pay his debts and avoid bankruptcy by making periodic payments to a trustee under bankruptcy court protection, with the trustee fairly distributing the funds deposited to creditors until all debts have been paid. The hearings record and the bankruptcy literature show uniform support for this principle. In practice however, the results have been less than satisfactory, even though chapter XIII has been available since 1938.

The credit community does not view chapter XIII with universal esteem, understandably so because any extended delay or reduction in payment to a creditor represents a measurable loss, particularly during the inflation of recent years. However, most credit grantors nevertheless strongly support the concept of chapter XIII as an alternative to ordinary bankruptcy. A greater difficulty has been the diversity of the individuals involved. The problems which caused financial distress to begin with, such as large families, underemployment, heavy medical expenses without adequate health insurance or simple overpurchasing, do not magically disappear on the filing of a petition under chapter XIII. These factors among others often make performance of chapter XIII plans very difficult, and in many cases are eventually dismissed or converted to ordinary bankruptcy after some payments have been made.

In addition, chapter XIII cases can require considerable time and effort from both bankruptcy judges and debtor attorneys. Where the initiative to undertake such public service work has been lacking, the use of chapter XIII has been very limited. Certainly related to these difficulties are the lack of national uniformity in handling such cases, the length of time such cases must necessarily remain pending and the differences in state exemption and garnishment laws. Such factors among others have caused the bankruptcy bench and bar in each judicial district to carefully measure their responses to and uses of chapter XIII based upon local practices and circumstances.

Finally, the existing chapter 13 statute is basically and seriously defective at this time in five respects. First, it does not permit some individuals with regular income to qualify, such as small business owners or social welfare program recipients, because their principal incomes do not come from wages, salary, or commissions. Second, while the court can grant a hardship discharge, where for example the debtor becomes totally disabled, three years must elapse first. Third, secured creditors are dealt with erratically, tediously, and uncertainly, resulting from a hodgepodge of state and federal statutory provisions, bankruptcy and local rules, many conflicting reported cases and varied local customs. Fourth, accommodation codebtors in consumer finance are usually inexperienced relatives or coworkers, and present law does not provide a reasonable restraint on collection from the while the debtor's case is pending. Fifth, formal creditor voting by literally counting written acceptances has unnecessarily imposed substantial expense for time, paper and uncertainty upon all concerned with only doubtful or marginal benefits.

The new chapter 13 undertakes to solve these problems insofar as bankruptcy law can provide a simple yet precise and effective system for individuals to pay debts under bankruptcy court protection and supervision. The new chapter 13 will permit almost any individual with regular income to propose and have approved a reasonable plan for debt repayment based on that individual's exact circumstances. As in current law, 100 percent payment plans will be encouraged by the limitation on availability of a subsequent discharge in section 727(a)(8). This kind of plan has provided great self-satisfaction and pride to those debtors who complete them and at the same time effect a maximum return to creditors. The limitation of § 727(a)(8) will also provide a slight brake on the wholesale filings of chapter 13's by small businessmen who wish to avoid some of the restrictions of chapter 11. It is also necessary to prevent chapter 13 plans from turning into mere offers of composition plans under which payments would equal only the non-exempt assets of the debtor.

SUMMARY AND DESCRIPTION OF PROVISIONS AFFECTING COLLECTION OF TAXES

The bill contains a series of provisions dealing with the priority, discharge, and collection of tax claims in bankruptcy. The writing of provisions dealing with the collection of taxes, at Federal, State, and local levels has presented one of the most difficult problems for the committee.

In a broad sense, the goals of rehabilitating debtors and giving equal treatment to private voluntary creditors must be balanced with

the interests of governmental tax authorities who, if unpaid taxes exist, are also creditors in the proceeding.

Since tax authorities are creditors of practically every taxpayer, another important element is that tax collection rules for bankruptcy cases have a direct impact on the integrity of the Federal, State and local tax systems. These tax systems, generally based on voluntary assessment, works to the extent that the majority of taxpayers think they are fair. This presumption of fairness is an asset which should be protected and not jeopardized by permitting taxpayers to use bankruptcy as a means of improperly avoiding their tax debts. To the extent that debtors in a bankruptcy are freed from paying their tax liabilities, the burden of making up the revenues thus lost must be shifted to other taxpayers.

A three-way tension thus exists among (1) general creditors, who should not have the funds available for payment of debts exhausted by an excessive accumulation of taxes for past years; (2) the debtor, whose "fresh start" should likewise not be burdened with such an accumulation; and (3) the tax collector, who should not lose taxes which he has not had reasonable time to collect or which the law has restrained him from collecting.

In balancing these interests, the committee bill gives governmental units a priority claim on assets of a debtor's estate for certain taxes which have not grown so "stale" as to constitute an unjustifiable burden on general unsecured creditors who may have extended new credit to the debtor since the tax liabilities arose. To avoid unduly burdening the debtor's fresh start, the bill continues the basic coordination of priority and discharge provisions that apply to taxes, so that unpaid taxes accorded priority are nondischargeable, and tax claims which are not given priority are with some exceptions not collectible from the debtor's post-bankruptcy assets.

In general, the bill retains two important priority rules of present law: first that priority and nondischarge are recognized for tax claims, for which the tax return was due not more than three years before the title 11 petition was filed, and for withheld income taxes and the employees' shares of social security taxes (the "trust fund" taxes) receive priority and are nondischargeable regardless of the due date of the return.

S. 2266 contains a longer list of tax priorities than is found in present law. The new priorities which have no counterpart in the Bankruptcy Act are included in part to cover a number of complex situations in which tax collection issues arise, but which are not dealt with by the Bankruptcy Act. The new categories are also designed to deal with some uncertainties and ambiguities in the tax rules of present bankruptcy law as well as certain loopholes under which some debtors have been able to exploit the administrative processes of a governmental unit so as to escape taxes unfairly.

In general, tax claims which are nondischargeable, despite a lack of priority, are those to whose staleness the debtor contributed by some wrong-doing or serious fault as, for example, taxes with respect to which the debtor filed a fraudulent return.

The bill also contains several provisions designed to minimize the administrative problems governmental tax authorities face, or may

face, in collecting taxes in bankruptcy proceedings. For example, section 108(c) of the bill extends or suspends the running of the statute of limitations on collection of debts outside of bankruptcy, thereby protect the right of governmental units (and other creditors) to collect debts which are not discharged in the bankruptcy proceeding. Section 501(e) of the bill gives governmental tax units a minimum period of time within which to file proof of their claims in a title 11 proceeding. Section 502 of the bill eliminates a requirement included in H.R. 8200 as § 502(i) that a tax authority file a proof of claim for taxes arising out of taxable sales made by the trustee since, in these situations, the trustee has better knowledge than the tax authority of the existence of such a liability for taxes.

The bill also contains several safeguards to assure normal administrative procedures and to prevent tax avoidance. Section 1130(d) provides that a plan of reorganization cannot be confirmed if its principal purpose is the avoidance of taxes. The bill also requires the proponent of a plan of reorganization of a debtor to exhaust administrative processes (in the form of a request for an advance ruling from the Internal Revenue Service) before the bankruptcy court can declare the tax effects of the plan (sec. 1146(d)).

Section 547(b)(2) provides that preferential transfers made by the debtor which may be avoided by the trustee are not to include tax payments, and section 547(c)(6) provides that the fixing of a tax lien is not to be considered a preferential transfer, provided notice of the lien has been duly filed.

TITLE II—AMENDMENTS TO TITLE 28 UNITED STATES CODE AND TO THE FEDERAL RULES OF EVIDENCE

ESTABLISHMENT OF BANKRUPTCY COURT, APPOINTMENT OF BANKRUPTCY JUDGES, AND JURISDICTION

The need for a functionally independent bankruptcy court has been demonstrated beyond question, first by the study and recommendations of the Commission on the Bankruptcy Laws of the United States,[1] by knowledgeable witnesses before the Subcommittee,[2] in published commentary,[3] as well as through long practical experience under the present referee system. A considerable body of opinion has developed in support of the establishment of a bankruptcy court separate from

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[1] H. Doc. 93–137, pt. I, 93d Cong., 1st sess., Report of the Commission on the Bankruptcy Laws of the United States (July 1973), at 85 et seq.

[2] E.g., Statement of Robert B. Chatz, president, Commercial Law League of America, Hearings before Subcommittee on Improvements in Judicial Machinery of the Committee on the Judiciary, U.S. Senate, on S. 2266 and H.R. 8200, 95th Cong., 1st sess. [hereinafter Senate hearings], 601, 601–603, statement of Robert J. Grimmig, member, American Bankers Association Bankruptcy Task Force, Senate hearings, at 573–574; statement of Charles A. Horsky, chairman, National Bankruptcy Conference, Senate hearings, at 831–832; statement of Hon. David A. Kline, president, National Conference of Bankruptcy Judges, Senate hearings, at 436, 437–439; statement of Harold Marsh, chairman, Commission on the Bankruptcy Laws of the United States, Senate hearings, at 480–481.

[3] E.g. Broude, "Jurisdiction and Venue Under the Bankruptcy Act of 1973," 48 Am. Bankr. L.J. 231 (1974); Cyr, "Setting the Record Straight for a Comprehensive Revision of the Bankruptcy Act of 1898," 49 Am. Bankr. L.J. 99 (1975); Cyr, "Structuring a New Bankruptcy Act: A Comparative Analysis," 52 Am. Bankr. L.J. 141 (1978); King, "Bankruptcy Code—Specialized Court Supported," 52 Am. Bankr. L.J. 193 (1978); Lee, "A Critical Comparison of the Commission Bill and the Judges' Bill for the Amendment of the Bankruptcy Act," 49 Am. Bankr. L.J. 1 (1975). But see Rifkind, "Bankruptcy Code—Specialized Court Opposed," 52 Am. Bankr. L.J. 137 (1978).

the United States district court, either as an article III court modeled after the present district court,[4] as a separate article I court patterned after the U.S. Tax Court,[5] or as a hybrid court consisting of an article I bankruptcy trial court appended to an article III court of bankruptcy appeals.[6]

The justifications for each proposal have been fully aired and considered. It is the view of the subcommittee that the establishment of the new bankruptcy court as an adjunct of the U.S. district court offers several important advantages:

(1) The presently established U.S. district courts can serve as article III repositories for the broadened jurisdiction essential to efficient judicial administration in bankruptcy cases.

(2) The expanded jurisdiction vested in the U.S. district courts may be delegated by statute for exercise exclusively by bankruptcy judges, subject always to review, as under present law, by the district courts. Certain perceived constitutional impediments[7] to the exercise of the judicial power of the United States by nontenured judges are thus eliminated.

(3) The dislocations associated with continued evolution of the present referee system into a functionally independent adjunct of the district court are minimal in comparison to those attendant upon the establishment of a separate bankruptcy court system.

(4) The fragmentation of Federal court jurisdiction envisioned by some is thus avoided.

(5) The convenience and economy of district court appeals are preserved.

The court of appeals of each circuit will appoint bankruptcy judges for its circuit. Compensation will be at the current annual rate of $48,500, an income level believed by the committee to be commensurate with the duties of the office.

Qualifications for bankruptcy judges include bar membership in good standing for at least five years at the time of appointment and competence as determined by the judicial council of the circuit. Additional qualification standards may be prescribed by the Judicial Conference of the United States.

The appointment of bankruptcy judges by the district court has contributed significantly (1) to a real and apparent dependency on the part of the bankruptcy court and its judges upon the district courts which appoint and review the decisions of bankruptcy judges, and (2) to the image of the bankruptcy court as the stepchild of the district court.[8] This bill is designed to eliminate both the real and apparent dependency and subservience of the bankruptcy court, in part by vesting the power to appoint bankruptcy judges in the courts of appeals, rather than in the district courts. The change is further warranted by the need to do away with the unseemly appellate practice

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[4] Report of the Subcommittee on Civil and Constitutional Rights of the House Committee on the Judiciary, 95th Cong., 2d sess., (committee print 13, Jan. 1978). See note 3 supra.

[5] See Commission report note 1 supra.

[6] See Cyr, "Structuring a New Banruptcy Court: A Comparative Analysis," 52 Am. Bankr. L.J. 141 (1978).

[7] See note 4 supra.

[8] *See. e.g.*, Statement of Charles A. Horsky, chairman, National Bankruptcy Conference, Senate hearings at 832.

whereby the district judge or judges who appoint the bankruptcy judge often rule on appeals from the orders of their own appointees.

There will be a twelve-year term of office for bankruptcy judges appointed under new 28 U.S.C. § 152. The present six-year term is insufficient to attract the calibre of individual needed to perform the highly demanding and important functions of the office of bankruptcy judge. By doubling the term of office for future bankruptcy judges it is anticipated that a major goal of this reform legislation, the establishment of a functionally independent bankruptcy court, can be further advanced.

Subsection (c) prescribes a twelve-year term of office for bankruptcy judges appointed under new 28 U.S.C. § 152.

A bankruptcy judge whose term expires is permitted to continue to serve until a successor is appointed and qualifies. With specific exceptions for retired or reserve military personnel, a bankruptcy judge may not hold employment with the United States Government. An individual may not continue to serve as a bankruptcy judge after reaching seventy years of age without the unanimous approval of the judges of the judicial council of the circuit.

Subsection (d) prescribes the same oath of office for bankruptcy judges as for district court judges.

Subsection (e) requires each bankruptcy judge to maintain residence in a district for which he is appointed, or in the case of the District of Columbia, within 20 miles.

Subsection (f) authorizes the chief judge of the circuit to require a bankruptcy judge to maintain his abode in or near a particular place in the district, unless the bankruptcy judges are able to agree among themselves which of them shall do so.

A bankruptcy judge whose term expires is permitted to continue to serve until a successor is appointed and qualifies.

The bill provides grounds upon which and prescribes the procedures by which the removal of a bankruptcy judge may be accomplished. Incompetence, misconduct, neglect of duty, and disability, as determined by the judicial council of the circuit, are the sole grounds for removal. The bankruptcy judge is entitled to be heard on the charges against him.

A major impetus underlying this reform legislation has been the need to enlarge the jurisdiction of the bankruptcy court in order to eliminate the serious delays, expense and duplications associated with the current dichotomy between summary and plenary jurisdiction, a wasteful remnant of the referee system left over from the pre-Chandler Act era. For fully four decades, and more notably during the present decade, referees in bankruptcy have served as trial judges of the bankruptcy court whose orders are final unless a timely appeal is taken to the district court. Yet the jurisdictional limitations presently imposed on the bankruptcy courts have embroiled the court and the parties in voluminous litigation whose sole function is to determine whether the court possesses the requisite summary jurisdiction to determine the merits of issues often necessarily heard by the court in determining its jurisdictional question. Upon a finding that it lacks summary jurisdiction, the bankruptcy court is required to dismiss the action, whereupon it is necessary for the parties to proceed anew with a

plenary action in either the U.S. district court or an appropriate state court to try issues already substantially tried in the summary proceedings before the bankruptcy court. Frequently, the liquidation of bankrupt estates and the rehabilitation of debtors are significantly prejudiced thereby.

The advent of the Rules of Bankruptcy Procedure, with their automatic reference of most bankruptcy matters to the referee in bankruptcy and their scrupulous insistence upon procedural due process, have underscored the absurdity of perpetuating these jurisdictional limitations in bankruptcy cases arising under title 11 and civil actions and proceedings arising under or related to cases under title 11.

It is the purpose of new section 164 of title 28, United States Code, in conjunction with 28 U.S.C. section 1334, as amended by section 216 of this act, to eliminate entirely the present jurisdictional dichotomy between summary and plenary jurisdiction. Therefore, except where the bankruptcy court abstains from hearing an action or proceeding arising under or related to a case under title 11, all cases under title 11 and all civil actions and proceedings arising under or related to cases under title 11 are to be before the bankruptcy judge.

Jurisdiction in bankruptcy cases and in civil actions and proceedings arising under or related to bankruptcy cases is vested directly in the district courts by 28 U.S.C. section 1334, as amended by section 216 of this act, consistent with the establishment of new bankruptcy courts as adjuncts of the United States district courts, pursuant to 28 U.S.C. section 151. Sections 164 and 1334 of title 28, United States Code, as enacted and amended by sections 201 and 216 of this bill, while conferring expanded jurisdiction in bankruptcy cases and related civil actions and proceedings directly upon the district courts, delegate the exclusive exercise of that jurisdiction at the trial level to bankruptcy judges, except as provided in subsection (d)(2) of section 1334, as amended.

Appeals from judgments and orders of a bankruptcy judge will go initially to the U.S. district court for the district in which the case, action, or proceeding in which the order or judgment appealed from, was entered is pending. Appeals may be taken by writ of certiorari from the district court to the United States court of appeals for the circuit in which the bankruptcy court is located, 28 U.S.C. § 1291. The initial appeals to the district court will aid in the expeditious processing of appeals and will not increase the costs to litigants. It will also prevent the overburdening of the appellate courts. *See* testimony of Judge Ruggero J. Aldisert, Senate hearings at page 414.

RETIREMENT PROVISIONS

Under existing law, referees (also designated "bankruptcy judges" by Bankruptcy Rule 901) are classified as ordinary civil service employees for retirement purposes [9] and their annuities are computed by the same formula that applies to the many other groups in the same classification, i.e., the average of the consecutive three highest yearly

[9] Title 5 U.S.C. § 8331. Federal judges are expressly excluded and separate treatment is given congressional employees. See n. 2, infra.

salaries multiplied by 1.5 percent for each of the first 5 years of service; by 1.75 percent for each of the second 5 years; and, by 2.0 percent for each of all succeeding years.[10] For those retirement benefits each sitting bankruptcy judge (referee) is paying 7 percent of his before-tax salary.[11]

Since 1960 the Judicial Conference has been on record in support of introduced legislation to improve referees' retirement.[12] The committee also agrees that bankruptcy judges are entitled to increased retirement benefits commensurate with their duties and responsibilities. The bill would provide that bankrupty judges receive the average of their "high-three" consecutive yearly salaries multiplied by 2.5 percent. For these retirement benefits, the bankruptcy judge would pay 8 percent of his before tax salary. This retirement program is tailored after that given to Members of Congress and congressional staff. It also represents for a one term bankruptcy judge (12 years) nearly a fifty precent increase in the annuity he would receive as contrasted to his current level of annuity.

A bankruptcy judge who is appointed at age 46 could serve two full terms and retire at 60 percent of his average high 3-year salary which in present dollars would amount to a retirement annuity of $29,100 per annum. The committee feels that this annuity combined with other retirement plans, civil service or private plans, that the bankruptcy judges may have participated in prior to ascending to the bench, will assure the financial security and the concomitant integrity and independence that goes hand in hand with that security.

Incumbents' civil service retirement status is unchanged by the bill.[13] However, there are provisions that if an incumbent should stay on after enactment he would be accorded a new and separate civil service classification from October 1, 1979 forward.[14] Thenceforth, until September 30, 1982,[15] the incumbent would accrue retirement annuity benefits at 2.5 percent per year of the average "high-three" salary.[16] That same formula will apply for those judges who are appointed to regular 12-year terms under section 201,[17] but incumbents with prior service will remain under the lesser percentage to which they are now subject [18] for all service before October 1, 1979.

TITLE III—AMENDMENTS TO OTHER ACTS

Title III makes conforming amendments to other acts and provisions of the United Stataes Code. These amendments are primarily technical in nature to conform cross references in other provisions of the U.S.C. to the new provisions and designations of Titles I and II of the bill.

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[10] Title 5 U.S.C. § 8339(a)(1). Congressional employees' annuities are set at 2.5 percent of the "high-3" average for each year of creditable service. Title 5 U.S.C. § 8339(b).
[11] Title 5 U.S.C. § 8334. A congressional employee contributes 7.5 percent. Ibid.
[12] Reports of Proceedings of Judicial Conference, Mar. 10–11, 1960.
[13] Sec. 403(b).
[14] Sec. 225(e).
[15] The end of transition as contemplated by the bill. Sec. 402(b). There is, however, provision for an extension until a successor is appointed and qualified. Sec. 402(d).
[16] Sec. 225(a). After Oct. 30, 1979 the contribution would increase to 8 percent. Sec. 225(b).
[17] This is identical with congressional employees' annuities. See n. 2 supra.
[18] See n. 2 supra and accompanying text.

TITLE IV—TRANSITION

In order to accomplish a smooth transition between the old bankruptcy law and procedures and the new law, the committee felt it necessary to have special provisions for a transition period. These provisions are contained in Title IV. The basic provision of this title calls for a 3-year transition period beyond the effective date of October 1, 1979. This is intended to ensure the availability of a cadre of experienced bankruptcy judges for service on the bankruptcy bench between the enactment of the act and October 1, 1982. It is in the public interest that bankruptcy judges in office on the date of enactment be continued in service, since the attraction of replacement judges from the private sector to serve a 3-year term would be extremely difficult. The acquired experience of the incumbent bankruptcy judges is a public resource which cannot be replaced until such time as their successors have seen equivalent service on the bankruptcy bench. Thus, the terms of bankruptcy judges serving at the date of enactment are extended through September 30, 1982, and a bankruptcy judge in office on the enactment date of this Act whose regular term extends beyond September 30, 1982, is permitted to complete the term for which he was originally appointed even though it may extend beyond September 30, 1982.

To help assure that only qualified bankruptcy judges shall serve during the transition period, a merit screening committee is created to evaluate the qualifications of each incumbent referee whose term of appointment expired prior to October 1, 1982. Bankruptcy judges serving between the enactment of this bill and October 1, 1982, are conferred with the powers of a judge appointed under section 201 of the bill, which include "the powers conferred upon the bankruptcy courts by this act."

The provisions of the bill are not to affect cases commenced under prior law, which are to proceed, with respect to both substantive and procedural matters, in the same fashion as though this act was not in effect. The bill provides that rules of bankruptcy procedure and various fees and charges in effect on October 1, 1979 (the effective date of the bill), shall continue in effect until superseded by new rules or fees promulgated in accordance with the act. However, the rules shall apply only if not inconsistent with the act.

To help the Congress and the Judicial Conference evaluate the impact of the new bankruptcy law, the Director of the Administrative Office of U.S. Courts will conduct a survey to determine the number of judges needed to implement the provisions of the act and report the results of the study to Congress and to the Conference by or before July 1, 1982. The committee feels that the 33-month period between the effective date and the date the report is due will be sufficient time for meaningful data and workload patterns to have evolved upon which to base judgement on the needs of the bankruptcy courts for numbers and distribution of personnel.

SECTION-BY-SECTION ANALYSIS

TITLE I—ENACTMENT OF TITLE 11 OF THE UNITED STATES CODE

Section 101

Section 101 codifies and enacts title 11 of the United States Code, entitled "Bankruptcy." It is the only section in title I of the bill. What follows is a description of each of the sections of proposed title 11; the bankruptcy code:

TITLE II—BANKRUPTCY

CHAPTER 1—GENERAL PROVISIONS

§ *101. Definitions*

Section 101 of title 11 contains 40 definitions:

Paragraph (1) defines "accountant" as an accountant authorized under applicable law to practice accounting. The term includes a professional accounting association, corporation, or partnership if applicable law authorizes such a unit to practice accounting.

Paragraph (2) defines "affiliate." An affiliate is an entity with a close relationship to the debtor. In includes a 20 percent parent or subsidiary of the debtor, whether a corporate, partnership, individual, or estate parent.

The use of "directly or indirectly" in subparagraphs (A) and (B) is intended to cover situations in which there is an opportunity to control, and where the existence of that opportunity operates as indirect control.

"Affiliate" is defined primarily for use in the definition of insider, *infra*, and for use in the chapter 11 reorganization cases. The definition of "affiliate" does not include an entity acting in a fiduciary or agency capacity if the entity does not have the sole discretionary power to vote 20 percent of the voting securities but hold them solely as security and have not exercised the power to vote. This restriction applies to a corporate affiliate under subparagraph (B) of paragraph (2).

Subsections (C) and (D) of paragraph (2) define affiliate also as those persons and entities whose business or substantially all of whose property is operated under a lease or operating agreement by a debtor and whose business or property is more than 50 percent under the control of the debtor.

The definition of "attorney" in paragraph (3) is similar to the definition of accountant.

Paragraph (4) defines "claim." The effect of the definition is a significant departure from present law. Under present law, "claim" is not defined in straight bankruptcy. Instead it is simply used, along with the concept of provability in section 63 of the Bankruptcy Act, to limit the kinds of obligations that are payable in a bankruptcy case. The term is defined in the debtor rehabilitation chapters of present law far more broadly. The definition in paragraph (4) adopts an even

broader definition of claim than is found in the present debtor rehabilitation chapters. The definition is any right to payment, whether or not reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured. The definition also includes as a claim an equitable right to performance that does not give rise to a right to payment. By this broadest possible definition and by the use of the term throughout the title 11, especially in subchapter I of chapter 5, the bill contemplates that all legal obligations of the debtor, no matter how remote or contingent, will be able to be dealt with in the bankruptcy case. It permits the broadest possible relief in the bankruptcy court.

Paragraph (5) defines "commodity broker" by reference to various terms used and defined in subchapter IV of chapter 7, Commodity Broker Liquidation. The terms are described in conection with section 761, *infra*.

Paragraph (6) defines "community claim" for those eight States that have community property laws. The definition is keyed to the liability of the debtor's property for a claim against either the debtor or the debtor's spouse. If the debtor's property is liable for a claim against either, that claim is a community claim.

Paragraph (7) defines "consumer debt". The definition is adapted from the definition used in various consumer protection laws. It encompasses only a debt incurred by an individual primarily for a personal, family, or household purpose.

The definition of "corporation" in paragraph (8) is similar to the definition in current law, section 1(8). The term encompasses any association having the power or privilege that a private corporation, but not an individual or partnership, has; partnership associations organized under a law that makes only the capital subscribed responsible for the debts of the partnership; joint-stock company; unincorporated company or association; and business trust. "Unincorporated association" is intended specifically to include a labor union, as well as other bodies that come under that phrase as used under current law. The exclusion of limited partnerships is explicit, and not left to the case law.

Paragraph (9) defines "court" as the bankruptcy judge in the district in which the case is pending except in municipal adjustment and railroad reorganization cases, where "court" means the Federal district judge.

Paragraph (10) defines "creditor" to include holders of prepetition claims against the debtor. However, it also encompasses certain holders of claims that are deemed to arise before the date of the filing of the petition, such as those injured by the rejection of an executory contract or unexpired lease, certain investment tax credit recapture claim holders, "involuntary gap" creditors, and certain holders of the right of setoff. The term also includes the holder of a prepetition community claim. A guarantor of or surety for a claim against the debtor is also a creditor, because he holds a contingent claim against the debtor that becomes fixed when he pays the creditor whose claim he has guaranteed or insured.

Paragraph (11) defines "custodian." There is no similar definition is current law. It is defined to facilitate drafting, and means a prepetition liquidator of the debtor's property, such as an assignee for the benefit of creditors, a receiver of the debtor's property, or administrator of the debtor's property. The definition of custodian to include a receiver or trustee is descriptive, and not meant to be limited to court officers with those titles. The definition is intended to include other officers of the court if their functions are substantially similar to those of a receiver or trustee.

"Debt" is defined in paragraph (12) as a liability on a claim. The terms "debt" and "claim" are coextensive: a creditor has a "claim" against the debtor; the debtor owes a "debt" to the creditor. This definition of "debt" and the definition of "claim" on which it is based, proposed 11 U.S.C. 101(4), does not include a transaction such as a policy loan on an insurance policy. Under that kind of transaction, the debtor is not liable to the insurance company for repayment; the amount owed is merely available to the company for setoff against any benefits that become payable under the policy. As such, the loan is not a claim (it is not a right to payment) that the company can assert against the estate; nor is the debtor's obligation a debt (a liability on a claim) that will be discharged under proposed 11 U.S.C. 523 or 524.

Paragraph (13) defines "debtor." Debtor means person or municipality concerning which a case under title II has been commenced. This is a change in terminology from present law, which identifies the person by or against whom a petition is filed in a straight bankruptcy liquidation case as the "bankrupt", and a person or municipality that is proceeding under a debtor rehabilitation chapter (chapters VIII through XIII of the Bankruptcy Act) as a "debtor." The term "debtor" is used for both kinds of cases in this bill, for ease of reference in chapters 1, 3, and 5 (which apply to straight bankruptcy and reorganization cases).

Paragraph (14) defines "disinterested person." The definition is adapted from section 158 of chapter X of current law, though it is expanded and modified in some respects. A person is a disinterested person if the person is not a creditor, equity security holder, or insider; is not and was not an investment banker of the debtor for any outstanding security of the debtor (the change from underwriter in current law to investment banker is to make the term more descriptive and to avoid conflict with the definition of underwriter in section 2(11) of the Securities Act of 1933 (15 U.S.C. 77b(11)); has not been an investment banker for a security of the debtor within 3 years before the date of the filing of the petition (the change from five years to three years here conforms the definition with the statute of limitations in the Securities Act of 1933), or an attorney for such an investment banker; is not an insider of the debtor or of such an investment banker; and does not have an interest materially adverse to the estate.

"Entity" is defined, for convenience, in paragraph (15), to include person, estate, trust, and governmental unit. It is the most inclusive of the various defined terms relating to bodies or units.

Paragraph (16) defines "equity security." The term includes a share or stock in a corporation, a limited partner's interest in a limited partnership, and a warrant or right to subscribe to an equity security. The term does not include a security, such as a convertible debenture, that is convertible into equity security, but has not been converted.

Paragraph (17) defines "equity security holder" for convenience as the holder of an equity securing of the debtor.

Paragraph (18) defines "farmer". It encompasses only those persons for whom farming operations contribute 75 percent or more of their total income.

Paragraphs (19) and (20) define "foreign proceeding" and "foreign representative". A foreign proceeding is a proceeding in another country in which the debtor has some substantial connection for the purpose of liquidating the estate of the debtor or the purpose of financial rehabilitation of the debtor. A foreign representative is the representative of the estate in a foreign proceeding, such as a trustee or administrator.

Paragraph (21) defines "governmental unit" in the broadest sense. The definition encompasses the United States, a State, Commonwealth, District, Territory, municipality, or foreign state, and a department, agency, or instrumentality of any of those entities. "Department, agency, or instrumentality" does not include an entity that owes its existence to State action, such as the granting of a charter or a license but that has no other connection with a State or local government or the Federal Government. The relationship must be an active one in which the department, agency, or instrumentality is actually carrying out some governmental function.

Paragraph (22) defines "indenture." It is similar to the definition of indenture in the Trust Indenture Act of 1939. An indenture is the instrument under which securities, either debt or equity, of the debtor are outstanding.

Paragraph (23) defines "indenture trustee" as the trustee under an indenture.

Paragraph (24) defines "individual with regular income." The effect of this definition, and of its use in section 109(e), is to expand substantially the kinds of individuals that are eligible for relief under chapter 13, Adjustment of Debts of an Individual with Regular Income. Chapter XIII is now available only for wage earners. The definition encompasses all individuals with incomes that are sufficiently stable and regular to enable them to make payments under a chapter 13 plan. Thus, individuals on welfare, social security, fixed pension incomes, or who live on investment incomes, will be able to work out repayment plans with their creditors rather than being forced into straight bankruptcy. Also, self-employed individuals will be eligible to use chapter 13 if they have regular incomes.

However, the definition excludes certain stockbrokers and commodity brokers, in order to prohibit them from proceeding under chapter 13 and avoiding the customer protection provisions of chapter 7.

"Insider", defined in paragraph (25), is a new term. An insider is one who has a sufficiently close relationship with the debtor that his conduct is made subject to closer scrutiny than those dealing at arms length with the debtor. If the debtor is an individual, then a relative of the debtor, a partnership in which the debtor is a general partner, a general partner of the debtor, and a corporation controlled by the debtor are all insiders. If the debtor is a corporation, then a controlling person, a relative of a controlling person, a partnership in which the debtor is a general partner, and a general partner of the debtor are all insiders. If the debtor is a partnership, then a general partner of or in the debtor, a relative of a general partner in the debtor, and a person in control are all insiders. If the debtor is a municipality, then an elected official of the debtor is an insider. In addition, affiliates of the debtor and managing agents are insiders.

The definition of "insolvent" in paragraph (26) is adopted from section 1(19) of current law. An entity is insolvent if its debts are greater than its assets, at a fair valuation, exclusive of property exempted or fraudulently transferred. It is the traditional bankruptcy balance sheet test of insolvency. For a partnership, the definition is modified to account for the liability of a general partner for the partnership's debts. The difference in this definition from that in current law is in the exclusion of exempt property for all purposes in the definition of insolvent.

Paragraph (27) defines "judicial lien." It is one of three kinds of liens defined in this section. A judicial lien is a lien obtained by judgment, levy, sequestration, or other legal or equitable process or proceeding.

Paragraph (28) defines "lien." The definition is new and is very broad. A lien is defined as a charge against or interest in property to secure payment of a debt or performance of an obligation. It includes inchoate liens. In general, the concept of lien is divided into three kinds of liens: judicial liens, security interests, and statutory liens. Those three categories are mutually exclusive and are exhausetive except for certain common law liens.

Paragraph (29) defines "municipality." The definition is adapted from the terms used in the chapter IX (municipal bankruptcy) amendment to the Bankruptcy Act enacted in 1976 (Pub. L. 94–260). That amendment spoke in terms of "political subdivision or public agency or instrumentality of a State". Bankruptcy Act Sec. 84. The term municipality is defined by those three terms for convenience. It does not include the District of Columbia or any territories of the United States.

"Person" is defined in paragraph (30). The definition is a change in wording, but not in substance, from the definition in section 1(23) of the Bankruptcy Act. The definition is also similar to the one contained in 1 U.S.C. sec. 1, but is repeated here for convenience and ease of reference. Person includes individual partnership, and corporation. The exclusion of governmental units is made explicit in order to avoid any confusion that may arise if, for example, a municipality is incorporated and thus is legally a corporation as well s governmentl unit. The definition does not include an estate or a trust, which are included only in the definition of "entity" in proposed 11 U.S.C. 101(14).

"Petition" is defined for convenience in paragraph (31). Petition is a petition under section 301, 302, 303, or 304 of the bankruptcy code—that is, a petition that commences a case under title 11.

Paragraph (32) defines purchaser as a transferre of a voluntary transfer, such as a sale or gift, and includes an immediate or mediate transferee of a purchaser.

The definition of "railroad" in paragraph (33) is derived from section 77 of the Bankruptcy Act. A railroad is a common carrier by railroad engaged in the transportation of individuals or property, or an owner of trackage facilities leased by such a common carrier. The effect of the definition and the use of the term in section 109(d) is to eliminate the limitation now found in section 77 of the Bankruptcy Act that only railroads engaged in interstate commerce may proceed under the railroad reorganization provisions. The limitation may have been inserted because of a doubt that the commerce power could not reach intrastate railroads. Be that as it may, this bill is enacted under the bankruptcy power.

Paragraph (34) defines "relative" as an individual related by affinity or consanguinity within the third degree as determined by the common law, and includes individuals in a step or adoptive relationship. The definition is similar to current law, but adds the latter phrase. This definition should be applied as of the time when the transaction that it concerns took place. Thus, a former spouse is not a relative, but if, for example, for purposes of the preference section, proposed 11 U.S.C. 547(b)(4)(B), the transferee was a spouse of the debtor at the time of the transfer sought to be avoided, then the transferee would be relative and subject to the insider rules, even if the transferee was no longer married to the debtor at the time of the commencement of the case or at the time of the commencement of the preference recovery proceeding.

Paragraph (35) defines "security." The definition is new and is modeled on the most recent draft of the American Law Institute's proposed securities code, with some exceptions. The interest of a limited partner in a limited partnership is included in order to make sure that everything that is defined as an equity security is also a "security." The definition, as with the definition of "entity", "insider", and "person", is open-ended because the term is not susceptible of precise specification. Thus the courts will be able to use the characterization provided in this definition to treat with new kinds of documents on a flexible basis.

Paragraphs (36) and (37) define "security agreement" and "security interest." A security interest is one of the kinds of liens. It is a lien created by an agreement. Security agreement is defined as the agreement creating the security interest. Though these terms are similar to the same terms in the Uniform Commercial Code, article IX, they are broader. For example, the U.C.C. does not cover real property mortgages. Under this definition, such a mortgage is included, as are all other liens created by agreement, even though not covered by the U.C.C. All U.C.C. security interests and security agreements are, however, security interests and security agreements under this definition. Whether a consignment or a lease constitutes a security interest under the bankruptcy code will depend on whether it constitutes a security interest under applicable State or local law.

Paragraph (38) defines another kind of lien, "statutory lien." The definition, derived from current law, states that a statutory lien is a lien arising solely by force of statute on specified circumstances or conditions and includes a lien of distress for rent (whether statutory, common law, or otherwise). The definition excludes judicial liens and security interests, whether or not they are provided for or are dependent on a statute, and whether or not they are made fully effective by statute. A statutory lien is only one that arises automatically, and is not based on an agreement to give a lien or on judicial action. Mechanics', materialmen's, and warehousemen's liens are examples. Tax liens are also included in the defintion of statutory lien.

"Stockbroker" is defined in paragraph (39) as a person engaged in the business of effecting transactions in securities for the account of others or with members of the general public from or for such person's own account, if the person has a customer, as defined. Thus, the definition, derived from a combination of the definitions of "broker" and "dealer" in the Securities Exchange Act of 1934, encompasses both brokers and dealers. The definition is used in section 109 and in subchapter III of chapter 7, Stockholder Liquidation. The term does not encompass an employee who acts for a principal that "effects" transaction or deals with the public, because such an employee will not have a "customer".

Paragraph (40) defines "transfer." It is derived and adapted, with stylistic changes, from section 1(30) of the Bankruptcy Act. A transfer is a disposition of an interest in property. The definition of transfer is as broad as possible. Many of the potentially limiting words in current law are deleted, and the language is simplified. Under this definition, any transfer of an interest in property is a transfer, including a transfer of possession, custody, or control even if there is no transfer of title, because possession, custody, and control are interests in property. A deposit in a bank account or similar account is a transfer.

§ 102. Rules of construction

Section 102 provides seven rules of construction. Some are derived from current law; others are derived from 1 U.S.C. 1; a few are new. They apply generally throughout proposed title 11. These are terms that are not appropriate for definition, but that require an explanation.

Paragraph (1) defines the concept of "after notice and a hearing." The concept is central to the bill and to the separation of the administrative and judicial functions of bankruptcy judges. The phrase means after such notice as is appropriate in the particular circumstances (to be prescribed by either the Rules of Bankruptcy Procedure or by the court in individual circumstances that the Rules do not cover. In many cases, the Rules will provide for combined notice of several proceedings), and such opportunity for a hearing as is appropriate in the particular circumstances. Thus, a hearing will not be necessary in every instance. If there is no objection to the proposed action, the action may go ahead without court action. This is a significant change from present law, which requires the affirmative approval of the bankruptcy judge for almost every action. The change will permit the bankruptcy judge to stay removed from the administration of the

bankruptcy or reorganization case, and to become involved only when there is a dispute about a proposed action, that is, only when there is an objection. The phrase "such opportunity for a hearing as is appropriate in the particular circumstances" is designed to permit the Rules and the courts to expedite or dispense with hearings when speed is essential. The language "or similar phrase" is intended to cover the few instances in the bill where "after notice and a hearing" is interrupted by another phrase, such as "after notice to the debtor and a hearing."

Paragraph (2) specifies that "claim against the debtor" includes claim against property of the debtor. This paragraph is intended to cover nonrecourse loan agreements where the creditor's only rights are against property of the debtor, and not against the debtor personally. Thus, such an agreement would give rise to a claim that would be treated as a claim against the debtor personally, for the purposes of the bankruptcy code.

Paragraph (3) is a codification of *American Surety Co.* v. *Marotta*, 287 U.S. 513 (1933). It specifies that "includes" and "including" are not limiting.

Paragraph (4) specifies that "may not" is prohibitive and not permissive (such as in "might not").

Paragraph (5) specifies that "or" is not exclusive. Thus, if a party "may do (a) or (b)", then the party may do either or both. The party is not limited to a mutually exclusive choice between the two alternatives.

Paragraph (6) makes clear that "order for relief" means entry of an order for relief. If the court orally orders relief, but the order is not entered until a later time, then any time measurements in the bill are from entry, not from the oral order. In a voluntary case, the entry of the order for relief is the filing of the petition commencing the voluntary case.

Paragraph (7) specifies that the singular includes the plural. The plural, however, generally does not include the singular. The bill uses only the singular, even when the item in question most often is found in plural quantities, in order to avoid the confusion possible if both rules of construction applied. When an item is specified in the plural, the plural is intended.

§ 103 Applicability of chapters

Section 103 prescribes which chapters of the proposed bankruptcy code apply in various cases. All cases, other than cases ancillary to foreign proceedings, are filed under chapter 7, 9, 11, or 13, the operative chapters of the proposed bankruptcy code. The general provisions that apply no matter which chapter a case is filed under are found in chapters 1, 3, and 5. Subsection (a) makes this explicit, with an exception for chapter 9. The other provisions, which are self-explanatory, provide the special rules for Stockbroker Liquidations, Commodity Broker Liquidations, Municipal Debt Adjustments, and Railroad Reorganizations.

§ 104. Adjustment of dollar amounts

This section requires that the Director of the Administrative Office of the U.S. Courts report to Congress and the President before Oct. 1,

1985, and before May 1 every 6 years thereafter a recommendation for adjustment in dollar amounts found in this title. The Committee feels that regular adjustment of the dollar amounts by the Director will conserve congressional time and yet assure that the relative dollar amounts used in the bill are maintained. Changes in the cost of living should be a significant, but not necessarily the only, factor considered by the Director. The fact that there has been an increase in the cost of living does not necessarily mean that an adjustment of dollar amounts would be needed or warranted.

§ *105. Power of court*

Section 105 is derived from section 2a(15) of present law, with two changes. First, the limitation on the power of a bankruptcy judge (the power to enjoin a court being reserved to the district judge) is removed as inconsistent with the increased powers and jurisdiction of the new bankruptcy court. Second, the bankruptcy judge is prohibited from appointing a receiver in a case under title 11 under any circumstances. The bankruptcy code has ample provision for the appointment of a trustee when needed. Appointment of a receiver would simply circumvent the established procedures.

This section is also anauthorization, as required under 28 U.S.C. 2283, for a court of the United States to stay the action of a State court. As such, *Toucey* v. *New York Life Insurance Company*, 314 U.S. 118 (1941), is overruled.

§ *106. Waiver of sovereign immunity*

Section 106 provides for a limited waiver of sovereign immunity in bankruptcy cases. Though Congress has the power to waive sovereign immunity for the Federal government completely in bankruptcy cases, the policy followed here is designed to achieve approximately the same result that would prevail outside of bankruptcy. Congress does not, however, have the power to waive sovereign immunity completely with respect to claims of a bankrupt estate against a State, though it may exercise its bankruptcy power through the supremacy clause to prevent or prohibit State action that is contrary to bankruptcy policy.

There is, however, a limited change from the result that would previal in the absence of bankruptcy; the change is two-fold and is within Congress' power vis-a-vis both the Federal Government and the States. First, the filing of a proof of claim against the estate by a governmental unit is a waiver by that governmental unit of sovereign immunity with respect to compulsory counterclaims, as defined in the Federal Rules of Civil Procedure, that is, counterclaims arising out of the same transaction or occurrence. The governmental unit cannot receive a distribution from the estate without subjecting itself to any liability it has to the estate within the confines of a compulsory counterclaim rule. Any other result would be one-sided. The counterclaim by the estate against the governmental unit is without limit.

Second, the estate may offset against the allowed claim of a governmental unit, up to the amount of the governmental unit's claim, any claim that the debtor, and thus the estate, has against the government-

al unit, without regard to whether the estate's claim arose out of the same transaction or occurrence as the government's claim. Under this provision, the setoff permitted is only to the extent of the governmental unit's claim. No affirmative recovery is permitted. Subsection (a) governs affirmative recovery.

Though this subsection creates a partial waiver of immunity when the governmental unit files a proof of claim, it does not waive immunity if the debtor or trustee, and not the governmental unit, files proof of a governmental unit's claim under proposed 11 U.S.C. 501(c).

This section does not confer sovereign immunity on any governmental unit that does not already have immunity. It simply recognizes any immunity that exists and prescribes the proper treatment of claims by and against that sovereign.

§ *107. Public access to papers*

Subsection (a) of this section makes all papers filed in a bankruptcy case and the dockets of the bankruptcy court public and open to examination at reasonable times without charge. "Docket" includes the claims docket, the proceedings docket, and all papers filed in a case.

Subsection (b) permits the court, on its own motion, and requires the court, on the request of a party in interest, to protect trade secrets, confidential research, development, or commercial information, and to protect persons against scandalous or defamatory matter.

§ *108. Extension of time*

Subsections (a) and (b), derived from Bankruptcy Act section 11, permit the trustee, when he steps into the shoes of the debtor, an extension of time for filing an action or doing some other act that is required to preserve the debtor's rights. Subsection (a) extends any statute of limitation for commencing or continuing an action by the debtor for two years after the date of the order for relief, unless it would expire later. Subsection (b) gives the trustee 60 days to take other actions, not covered under subsection (a), such as filing a pleading, demand, notice, or proof of claim or loss (such as an insurance claim), unless the period for doing the relevant act expires later than 60 days after the date of the order for relief.

Subsection (c) extends the statute of limitations for creditors. Thus, if a creditor is stayed from commencing or continuing an action against the debtor because of the bankruptcy case, then the creditor is permitted an additional 30 days after notice of the event by which the stay is terminated, whether that event be relief from the automatic stay under proposed 11 U.S.C. 362 or 1301, the closing of the bankruptcy case (which terminates the stay), or the exception from discharge of the debts on which the creditor claims.

In the case of Federal tax liabilities, the Internal Revenue Code suspends the statute of limitations on a tax liability of a taxpayer from running while his assets are in the control or custody of a court and for 6 months thereafter (sec. 6503(b) of the Code). The amendment applies this rule in a title 11 proceeding. Accordingly, the statute of limitations on collection of a nondischargeable Federal tax liability of a debtor will resume running after 6 months following the end of

the period during which the debtor's assets are in the control or custody of the bankruptcy court. This rule will provide the Internal Revenue Service adequate time to collect nondischargeable taxes following the end of the title 11 proceedings.

§ 109. Who may be a debtor

This section specifies eligibility to be a debtor under the bankruptcy laws. The first criterion, found in the current Bankruptcy Act section 2a(1) requires that the debtor reside or have a domicile, a place of business, or property in the United States.

Subsection (b) defines eligibility for liquidation under chapter 7. All persons are eligible except insurance companies, and certain banking institutions. These exclusions are contained in current law. However, the banking institution exception is expanded in light of changes in various banking laws since the current law was last amended on this point. A change is also made to clarify that the bankruptcy laws cover foreign banks and insurance companies not engaged in the banking or insurance business in the United States but having assets in the United States. Banking institutions and insurance companies engaged in business in this country are excluded from liquidation under the bankruptcy laws because they are bodies for which alternate provision is made for their liquidation under various State or Federal regulatory laws. Conversely, when a foreign bank or insurance company is not engaged in the banking or insurance business in the United States, then those regulatory laws do not apply, and the bankruptcy laws are the only ones available for administration of any assets found in United States.

The first clause of subsection (b) provides that a railroad is not a debtor except where the requirements of section 1174 are met.

Subsection (c) provides that only a person who may be a debtor under chapter 7 and a railroad may also be a debtor under chapter 11, but a stockbroker or commodity broker is eligible for relief only under chapter 7. Subsection (d) establishes dollar limitations on the amount of indebtedness that an individual with regular income can incur and yet file under chapter 13.

CHAPTER 3—CASE ADMINISTRATION

SUBCHAPTER I—COMMENCEMENT OF A CASE

§ 301. Voluntary cases

Section 301 specifies the manner in which a voluntary bankruptcy case is commenced. The debtor files a petition under this section under the particular operative chapter of the bankruptcy code under which he wishes to proceed. The filing of the petition constitutes an order for relief in the case under that chapter. The section contains no change from current law, except for the use of the phrase "order for relief" instead of "adjudication." The term adjudication is replaced by a less pejorative phrase in light of the clear power of Congress to permit voluntary bankruptcy without the necessity for an adjudication, as under the 1898 act, which was adopted when voluntary bankruptcy was a concept not thoroughly tested.

§ 302. Joint cases

A joint case is a voluntary bankruptcy case concerning a wife and husband. Under current law, there is no explicit provision for joint cases. Very often, however, in the consumer debtor context, a husband and wife are jointly liable on their debts, and jointly hold most of their property. A joint case will facilitate consolidation of their estates, to the benefit of both the debtors and their creditors, because the cost of administration will be reduced, and there will be only one filing fee.

Section 302 specifies that a joint case is commenced by the filing of a petition under an appropriate chapter by an individual and that individual's spouse. Thus, one spouse cannot take the other into bankruptcy without the other's knowledge or consent. The filing of the petition constitutes an order for relief under the chapter selected.

Subsection (b) requires the court to determine the extent, if any, to which the estates of the two debtors will be consolidaed; that is, assets and liabilities combined in a single pool to pay creditors. Factors that will be relevant in the court's determination include the extent of jointly held property and the amount of jointly-owned debts. The section, of course, is not license to consolidate in order to avoid other provisions of the title to the detriment of either the debtors or their creditors. It is designed mainly for ease of administration.

§ 303. Involuntary cases

Section 303 governs the commencement of involuntary cases under title 11. An involuntary case may be commenced only under chapter 7, Liquidation, or chapter 11, Reorganization. Involuntary cases are not permitted for municipalities, because to do so may constitute an invasion of State sovereignty contrary to the 10th amendment, and would constitute bad policy, by permitting the fate of a municipality, governed by officials elected by the people of the municipality, to be determined by a small number of creditors of the municipality. Involuntary chapter 13 cases are not permitted either. To do so would constitute bad policy, because chapter 13 only works when there is a willing debtor that wants to repay his creditors. Short of involuntary servitude, it is difficult to keep a debtor working for his creditors when he does not want to pay them back. *See* chapter 3, *supra.*

The exceptions contained in current law that prohibit involuntary cases against farmers, ranchers and eleemosynary institutions are continued. Farmers and ranchers are excepted because of the cyclical nature of their business. One drought year or one year of low prices, as a result of which a farmer is temporarily unable to pay his creditors, should not subject him to involuntary bankruptcy. Eleeymosynary institutions, such as churches, schools, and charitable organizations and foundations, likewise are exempt from involuntary bankruptcy.

The provisions for involuntary chapter 11 cases is a slight change from present law, based on the proposed consolidation of the reorganization chapters. Currently, involuntary cases are permitted under chapters X and XII but not under chapter XI. The consolidation requires a single rule for all kinds of reorganization proceedings. Because the assets of an insolvent debtor belong equitably to his credi-

tors, the bill permits involuntary cases in order that creditors may realize on their assets through reorganization as well as through liquidation.

Subsection (b) of the section specifies who may file an involuntary petition. As under current law, if the debtor has more than 12 creditors, three creditors must join in the involuntary petition. The dollar amount limitation is changed from current law to $5,000. The new amount applies both to liquidation and reorganization cases in order that there not be an artificial difference between the two chapters that would provide an incentive for one or the other. Subsection (b)(1) makes explicit the right of an indenture trustee to be one of the three petitioning creditors on behalf of the creditors the trustee represents under the indenture. If all of the general partners in a partnership are in bankruptcy, then the trustee of a single general partner may file an involuntary petition against the partnership. Finally, a foreign representative may file an involuntary case concerning the debtor in the foreign proceeding, in order to administer assets in this country. This subsection is not intended to overrule Bankruptcy Rule 104(d), which places certain restrictions on the transfer of claims for the purpose of commencing an involuntary case. That Rule will be continued under section 405(d) of this bill.

Subsection (c) permits creditors other than the original petitioning creditors to join in the petition with the same effect as if the joining creditor had been one of the original petitioning creditors. Thus, if the claim of one of the original petitioning creditors is disallowed, the case will not be dismissed for want of three creditors or want of $5,000 in petitioning claims if the joining creditor suffices to fulfill the statutory requirements.

Subsection (d) permits the debtor to file an answer to an involuntary petition. The subsection also permits a general partner in a partnership debtor to answer an involuntary petition against the partnership if he did not join in the petition. Thus, a partnership petition by less than all of the general partners is treated as an involuntary, not a voluntary, petition.

The court may, under subsection (e), require the petitioners to file a bond to indemnify the debtor for such amounts as the court may later allow under subsection (i). Subsection (i) provides for costs, attorneys fees, and damages in certain circumstances. The bonding requirement will discourage frivolous petitions as well as spiteful petitions based on a desire to embarrass the debtor (who may be a competitor of a petitioning creditor) or to put the debtor out of business without good cause. An involuntary petition may put a debtor out of business even if it is without foundation and is later dismissed.

Subsection (f) is both a clarification and a change from existing law. It permits the debtor to continue to operate any business of the debtor and to dispose of property as if the case had not been commenced. The court is permitted, however, to control the debtor's powers under this subsection by appropriate orders, such as where there is a fear that the debtor may attempt to abscond with assets, dispose of them at less than their fair value, or dismantle his business, all to the detriment of the debtor's creditors.

The court may also, under subsection (g), appoint an interim trustee to take possession of the debtor's property and to operate any business of the debtor, pending trial on the involuntary petition. The court may make such an order only on the request of a party in interest, and after notice to the debtor and a hearing. There must be a showing that a trustee is necessary to preserve the property of the estate or to prevent loss to the estate. The debtor may regain possession by posting a sufficient bond.

Subsection (h) provides the standard for an order for relief on an involuntary petition. If the petition is not timely controverted (the Rules of Bankruptcy Procedure will fix time limits), the court orders relief after a trial, only if the debtor is generally unable to pay its debts as they mature, or if the debtor has failed to pay a major portion of his debts as they become due, or if a custodian was appointed during the 90-day period preceding the filing of the petition. The first two tests are variations of the equity insolvency test. They represent the most significant departure from present law concerning the grounds for involuntary bankruptcy, which requires an act of bankruptcy. Proof of the commission of an act of bankruptcy has frequently required a showing that the debtor was insolvent on a "balance-sheet" test when the act was committed. This bill abolishes the concept of acts of bankruptcy.

The equity insolvency test has been in equity jurisprudence for hundreds of years, and though it is new in the bankruptcy context (except in chapter X), the bankruptcy courts should have no difficulty in applying it. The third test, appointment of a custodian within ninety days before the petition, is provided for simplicity. It is not a partial re-enactment of acts of bankruptcy. If a custodian of all or substantially all of the property of the debtor has been appointed, this paragraph creates an irrebuttable presumption that the debtor is unable to pay its debts as they mature. Moreover, once a proceeding to liquidate assets has been commenced, the debtor's creditors have an absolute right to have the liquidation (or reorganization) proceed in the bankruptcy court and under the bankruptcy laws with all of the appropriate creditor and debtor protections that those laws provide. Ninety days gives creditors ample time in which to seek bankruptcy liquidation after the appointment of a custodian. If they wait beyond the ninety day period, they are not precluded from filing an involuntary petition. They are simply required to prove equity insolvency rather than the more easily provable custodian test.

Subsection (i) permits the court to award costs, reasonable attorney's fees, or damages if an involuntary petition is dismissed other than by consent of all petitioning creditors and the debtor. The damages that the court may award are those that may be caused by the taking of possession of the debtor's property under subsection (g) or section 1104 of the bankruptcy code. In addition, if a petitioning creditor filed the petition in bad faith, the court may award the debtor any damages proximately caused by the filing of the petition. These damages may include such items as loss of business during and after the pendency of the case, and so on. "Or" is not exclusive in this paragraph. The court may grant any or all of the damages provided for under the provision. Dismissal in the best interests of credits under section 305(a)(1) would not give rise to a damages claim.

Under subsection (j), the court may dismiss the petition by consent only after giving notice to all creditors. The purpose of the subsection is to prevent collusive settlements among the debtor and the petitioning creditors while other creditors, that wish to see relief ordered with respect to the debtor but that did not participate in the case, are left without sufficient protection.

Subsection (k) governs involuntary cases against foreign banks that are not engaged in business in the United States but that have assets located here. The subsection prevents a foreign bank from being placed into bankruptcy in this country unless a foreign proceeding against the bank is pending. The special protection afforded by this section is needed to prevent creditors from effectively closing down a foreign bank by the commencement of an involuntary bankruptcy case in this country unless that bank is involved in a proceeding under foreign law. An involuntary case commenced under this subsection gives the foreign representative an alternative to commencing a case ancillary to a foreign proceeding under section 304.

§ 304. Cases ancillary to foreign proceedings

This section governs cases filed in the bankruptcy courts that are ancillary to foreign proceedings. That is, where a foreign bankruptcy case is pending concerning a particular debtor and that debtor has assets in this country, the foreign representative may file a petition under this section, which does not commence a full bankruptcy case, in order to administer assets located in this country, to prevent dismemberment by local creditors of assets located here, or for other appropirate relief. The debtor is given the opportunity to controvert the petition.

Subsection (c) requires the court to consider several factors in determining what relief, if any, to grant. The court is to be guided by what will best assure an economical and expeditious administration of the estate, consistent with just treatment of all creditors and equity security holders; protection of local creditors and equity security holders against prejudice and inconvenience in processing claims and interests in the foreign proceeding; prevention of preferential or fraudulent disposition of property of the estate; distribution of the proceeds of the estate substantially in conformity with the distribution provisions of the bankruptcy code; and, if the debtor is an individual, the provision of an opportunity for a fresh start. These guidelines are designed to give the court the maximum flexibility in handling ancillary cases. Principles of international comity and respect for the judgments and laws of other nations suggest that the court be permitted to make the appropriate orders under all of the circumstances of each case, rather than being provided with inflexible rules.

§ 305. Abstention

A principle of the common law requires a court with jurisdiction over a particular matter to take jurisdiction. This section recognizes that there are cases in which it would be appropriate for the court to decline jurisdiction. Abstention under this section, however, is of jurisdiction over the entire case. Abstention from jurisdiction over a particular proceeding in a case is governed by proposed 28 U.S.C. 1471(c). Thus, the court is permitted, if the interests of creditors

and the debtor would be better served by dismissal of the case or suspension of all proceedings in the case, to so order. The court may dismiss or suspend under the first paragraph, for example, if an arrangement is being worked out by creditors and the debtor out of court, there is no prejudice to the results of creditors in that arrangement, and an involuntary case has been commenced by a fed recalcitrant creditors to provide a basis for future threats to extract full payment. The less expensive out-of-court workout may better serve the interests in the case. Likewise, if there is pending a foreign proceeding concerning the debtor and the factors specified in proposed 11 U.S.C. 304(c) warrant dismissal or suspension, the court may so act.

Subsection (b) gives a foreign representative authority to appear in the bankruptcy court to request dismissal or suspension. Subsection (c) makes the dismissal or suspension order nonreviewable by appeal or otherwise. The bankruptcy court, based on its experience and discretion is vested with the power of decision.

§ 306. Limited appearance

Section 306 permits a foreign representative that is seeking dismissal or suspension under section 305 of an ancillary case or that is appearing in connection with a petition under section 303 or 304 to appear without subjecting himself to the jurisdiction of any other court in the United States, including State courts. The protection is necessary to allow the foreign representative to present his case and the case of the foreign estate, without waiving the normal jurisdictional rules of the foreign country. That is, creditors in this country will still have to seek redress against the foreign estate according to the host country's jurisdictional rules. Any other result would permit local creditors to obtain unfair advantage by filing an involuntary case, thus requiring the foreign representative to appear, and then obtaining local jurisdiction over the representative in connection with his appearance in this country. That kind of bankruptcy law would legalize an ambush technique that has frequently been rejected by the common law in other contexts.

However, the bankruptcy court is permitted under section 306 to condition any relief under section 303, 304, or 305 on the compliance by the foreign representative with the orders of the bankruptcy court. The last provision is not carte blanche to the bankruptcy court to require the foreign representative to submit to jurisdiction in other courts contrary to the general policy of the section. It is designed to enable the bankruptcy court to enforce its own orders that are necessary to the appropriate relief granted under section 303, 304, or 305.

SUBCHAPTER II—OFFICERS

§ 321. Eligibility to serve as trustee

Section 321 is adapted from current Bankruptcy Act § 45 and Bankruptcy Rule 209. Subsection (a) specifies that an individual may serve as trustee in a bankruptcy case only if he is competent to perform the duties of trustee and resides or has an office in the judicial district within which the case is pending, or in an adjacent judicial district. A corporation must be authorized by its charter or bylaws to act as

trustee, and, for chapter 7 or 13 cases, must have an office in any of the above mentioned judicial districts.

§ *322 Qualification of trustee*

A trustee qualifies in a case by filing, within five days after selection, a bond in favor of the United States, conditioned on the faithful performance of his official duties. This section is derived from the Bankruptcy Act section 50b. The court is required to determine the amount of the bond and the sufficiency of the surety on the bond. Subsection (c), derived from Bankruptcy Act section 50i, relieves the trustee from personal liability and from liability on his bond for any penalty or forfeiture incurred by the debtor. Subsection (d), derived from section 50m, fixes a two-year statute of limitations on any action on a trustee's bond. Finally, subsection (e) dispenses with the bonding requirement for the United States trustee.

§ *323. Role and capacity of trustee*

Subsection (a) of this section makes the trustee the representative of the estate. Subsection (b) grants the trustee the capacity to sue and to be sued. If the debtor remains in possession in a chapter 11 case, section 1107 gives the debtor in possession these rights of the trustee: the debtor in possession becomes the representative of the estate, and may sue and be used. The same applies in a chapter 13 case.

§ *324. Removal of trustee*

This section permits the court, after notice and a hearing, to remove a trustee for cause.

§ *325. Effect of vacancy*

Section 325, derived from Bankruptcy Act section 46 and Bankruptcy Rule 221(b), specifies that a vacancy in the office of trustee during a case does not abate any pending action or proceeding. The successor trustee, when selected and qualified, is substituted as a party in any pending action or proceeding.

§ *326. Limitation on compensation of trustee*

This section is derived in part from section 48c of the Bankruptcy Act. It must be emphasized that this section does not authorize compensation of trustees. This section simply fixes the maximum compensation of a trustee. Proposed 11 U.S.C. 330 authorizes and fixes the standard of compensation. Under section 48c of current law, the maximum limits have tended to become minimums in many cases. This section is not intended to be so interpreted. The limits in this section, together with the limitations found in section 330, are to be applied as outer limits, and not as grants or entitlements to the maximum fees specified.

The maximum fee schedule is derived from section 48c(1) of the present act, but with a change relating to the bases on which the percentage maxima are computed. The maximum fee schedule is based on decreasing percentages of increasing amounts. The amounts are the amounts of money distributed by the trustee to parties in interest, excluding the debtor, but including secured creditors. These amounts were last amended in 1952. Since then, the cost of living has approximately doubled. Thus, the bases were doubled.

It should be noted that the bases on which the maximum fee is computed includes moneys turned over to secured creditors, to cover the situation where the trustee liquidates property subject to a lien and distributes the proceeds. It does not cover cases in which the trustee simply turns over the property to the secured creditor, nor where the trustee abandons the property and the secured creditor is permitted to foreclose. The provision is also subject to the rights of the secured creditor generally under proposed section 506, especially 506(c). The $150 discretionary fee provision of current law is retained.

Subsection (b) of this section entitles an operating trustee to a reasonable fee, without any limitation based on the maximum provided for a liquidating trustee as in current law, Bankruptcy Act § 48c(2).

Subsection (c) permits a maximum fee of five percent on all payments to creditors under a chapter 13 plan to the trustee appointed in the case.

Subsection (d) provides a limitation not found in current law. Even if more than one trustee serves in the case, the maximum fee payable to all trustees does not change. For example, if an interim trustee is appointed and an elected trustee replaces him, the combined total of the fees payable to the interim trustee and the permanent trustee may not exceed the amount specified in this section. Under current law, very often a receiver receives a full fee and a subsequent trustee also receives a full fee. The resultant "double-dipping", especially in cases in which the receiver and the trustee are the same individual, is detrimental to the interests of creditors, by needlessly increasing the cost of administering bankruptcy estates.

Subsection (e) permits the court to deny compensation to a trustee if the trustee has been derelict in his duty by employing counsel, who is not disinterested.

§ *327. Employment of professional persons*

This section authorizes the trustee, subject to the court's approval, to employ professional persons, such as attorneys, accountants, appraisers, and auctioneers, to represent or perform services for the estate. The trustee may employ only distinterested persons that do not hold or represent an interest adverse to the estate.

Subsection (b) is an exception, and authorizes the trustee to retain or replace professional persons that the debtor has employed, if necessary in the operation of the debtor's business.

Subsection (c) provides a professional person is not disqualified for employment solely because of the person's prior employment by or representation of a secured or unsecured creditor.

Subsection (d) permits the court to authorize the trustee, if qualified to act as his own counsel or accountant.

Subsection (e) permits the trustee, subject to the court's approval, to employ for a specified special purpose an attorney that has represented the debtor, if such employment is in the best interest of the estate and if the attorney does not hold or represent an interest adverse to the debtor of the estate with respect to the matter on which he is to be employed. This subsection does not authorize the employment of the debtor's attorney to represent the estate generally or to represent the trustee in the conduct of the bankruptcy case. The subsection will most

likely be used when the debtor is involved in complex litigation, and changing attorneys in the middle of the case after the bankruptcy case has commenced would be detrimental to the progress of that other litigation.

§ 328. Limitation of compensation of professional persons

This section, which is parallel to section 326, fixes the maximum compensation allowable to a professional person employed under section 327. It authorizes the trustee, with the court's approval, to employ professional persons on any reasonable terms, including on a retainer, on an hourly, or on a contingent fee basis. Subsection (a) further permits the court to allow compensation different from the compensation provided under the trustee's agreement if the prior agreement proves to have been improvident in light of development unanticipatable at the time of the agreement. The court's power includes the power to increase as well as decrease the agreed upon compensation. This provision is permissive, not mandatory, and should not be used by the court if to do so would violate the code of ethics of the professional involved.

Subsection (b) limits a trustee that has been authorized to serve as his own counsel to only one fee for each service. The purpose of permitting the trustee to serve as his own counsel is to reduce costs. It is not included to provide the trustee with a bonus by permitting him to receive two fees for the same service or to avoid the maxima fixed in section 326. Thus, this subsection requires the court to differentiate between the trustee's services as trustee, and his services as trustee's counsel, and to fix compensation accordingly. Services that a trustee normally performs for an estate without assistance of counsel are to be compensated under the limits fixed in section 326. Only services that he performs that are normally performed by trustee's counsel may be compensated under the maxima imposed by this section.

Subsection (c) permits the court to deny compensation for services and reimbursement of expenses if the professional person is not disinterested of if he represents or holds an interst adverse to the estate on the matter on which he is employed. The subsection provides a penalty for conflicts of interest.

§ 329. Debtor's transactions with attorneys

This section, derived in large part from current Bankruptcy Act section 60d, requires the debtor's attorney to file with the court a statement of the compensation paid or agreed to be paid to the attorney for services in contemplation of and in connection with the case, and the source of the compensation. Payments to a debtor's attorney provide serious potential for evasion of creditor protection provisions of the bankruptcy laws, and serious potential for overreaching by the debtor's attorney, and should be subject to careful scrutiny.

Subsection (b) permits the court to deny compensation to the attorney, to cancel an agreement to pay compensation, or to order the return of compensation paid, if the compensation exceeds the reasonable value of the services provided. The return of payments already made are generally to the trustee for the benefit of the estate. However, if the property would not have come into the estate in any

event, the court will order it returned to the entity that made the payment.

The Bankruptcy Commission recommended a provision similar to this that would have also permitted an examination of the debtor's transactions with insiders. S. 236, 94th Cong., 1st sess. sec. 4–311(b) (1975). Its exclusion here is to permit it to be dealt with by the Rules of Bankruptcy Procedure. It is not intended that the provision be deleted entirely, only that the flexibility of the rules is more appropriate for such evidentiary matters.

§ 330. Compensation of officers

Section 330 authorizes the court to award compensation for services and reimbursement of expenses of officers of the estate, and other professionals. The compensation is to be reasonable, for economy in administration is the basic objective. Compensation is to be for actual necessary services, based on the time spent, the nature, the extent and the value of the services rendered, and the cost of comparable services in nonbankruptcy cases. There are the criteria that have been applied by the courts as analytic aids in defining "reasonable" compensation.

The reference to "the cost of comparable services" in a nonbankruptcy case is not intended as a change of existing law. In a bankruptcy case fees are not a matter for private agreement. There is inherent a "public interest" that "must be considered in awarding fees," *Massachusetts Mutual Life Insurance Co.* v. *Brock*, 405 F. 2d 429, 432 (C.A. 5, 1968), cert. denied, 395 U.S. 906 ( ). An allowance is the result of a balance struck between moderation in the interest of the estate and its security holders and the need to be "generous enough to encourage" lawyers and others to render the necessary and exacting services that bankruptcy cases often require. *In re Yale Express System, Inc.*, 366 F. Supp. 1376, 1381 (S.D.N.Y. 1973).[19] The rates for similar kinds of services in private employment is one element, among others, in that balance. Compensation in private employment noted in subsection (a) is a point of reference, not a controlling determinant of what shall be allowed in bankruptcy cases.

One of the major reforms in 1938, especially for reorganization cases, was centralized control over fees in the bankruptcy courts. See *Brown* v. *Gerdes*, 321 U.S. 178, 182–184 (1944); *Leiman* v. *Guttman*, 336 U.S. 1, 4–9 (1949). It was intended to guard against a recurrence of "the many sordid chapters" in "the history of fees in corporate reorganizations." *Dickinson Industrial Site, Inc.* v. *Cowan*, 309 U.S. 382, 388 (1940). In the years since then the bankruptcy bar has flourished and prospered, and persons of merit and quality have not eschewed public service in bankruptcy cases merely because bankruptcy courts, in the interest of economy in administration, have not allowed them compensation that may be earned in the private economy of business or the professions. There is no reason to believe that, in generations to come, their successors will be less persuaded by the need to serve in the public interest because of stronger allures of private gain elsewhere.

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[19] See also *In re Delta Food Processing Corp.*, 374 F. Supp. 76, 82 (N.D. Miss. 1974). *Brock, supra*; *In re Bemporad Carpet Mills, Inc.*, 434 F. 2d 988, 989–90 (C.A. 5, 1970).

Subsection (a) provides for compensation of paraprofessionals in order to reduce the cost of administering bankruptcy cases. Paraprofessionals can be employed to perform duties which do not require the full range of skills of a qualified professional. Some courts have not hesitated to recognize paraprofessional services as compensable under existing law. An explicit provision to that effect is useful and constructive.

The last sentence of subsection (a) provides that in the case of a public company—defined in section 1101(3)—the court shall refer, after a hearing, all applications to the Securities and Exchange Commission for a report, which shall be advisory only. In Chapter X cases in which the Commission has appeared, it generally filed reports on fee applications. Usually, courts have accorded the SEC's views substantial weight, as representing the opinion of a disinterested agency skilled and experienced in reorganization affairs. The last sentence intends for the advisory assistance of the Commission to be sought only in case of a public company in reorganization under chapter 11.

Subsection (b) reenacts section 249 of Chapter X of the Bankruptcy Act (11 U.S.C. 649). It is a codification of equitable principles designed to prevent fiduciaries in the case from engaging in the specified transactions since they are in a position to gain inside information or to shape or influence the course of the reorganization. *Wolf* v. *Weinstein*, 372 U.S. 633 (1963). The statutory bar of compensation and reimbursement is based on the principle that such transactions involve conflicts of interest. Private gain undoubtedly prompts the purchase or sale of claims or stock interests, while the fiduciary's obligation is to render loyal and disinterested service which his position of trust has imposed upon him. Subsection (b) extends to a trustee, his attorney, committees and their attorneys, or any other persons "acting in the case in a representative or fiduciary capacity." It bars compensation to any of the foregoing, who after assuming to act in such capacity has purchased or sold, directly or indirectly, claims against, or stock in the debtor. The bar is absolute. It makes no difference whether the transaction brought a gain or loss, or neither, and the court is not authorized to approve a purchase or sale, before or after the transaction. The exception is for an acquisition or transfer "otherwise" than by a voluntary purchase or sale, such as an acquistion by bequest. See *Otis & Co.* v. *Insurance Bldg. Corp.*, 110 F.2d 333, 335 (C.A. 1, 1940).

Subsection (c) is intended for no asset liquidation cases where minimal compensation for trustees is needed. The sum of $20 will be allowed in each case, which is double the amount provided under current law.

§ 331. Interim compensation

Section 331 permits trustees and professional persons to apply to the court not more than once every 120 days for interim compensation and reimbursement payments. The court may permit more frequent applications if the circumstances warrant, such as in very large cases where the legal work is extensive and merits more frequent payments. The court is authorized to allow and order disbursement to the applicant of compensation and reimbursement that is otherwise allowable

under section 330. The only effect of this section is to remove any doubt that officers of the estate may apply for, and the court may approve, compensation and reimbursement during the case, instead of being required to wait until the end of the case, which in some instances, may be years. The practice of interim compensation is followed in some courts today, but has been subject to some question. This section explicitly authorizes it.

This section will apply to professionals such as auctioneers and appraisers only if they are not paid on a per job basis.

§ 341. Meetings of creditors and equity security holders

Section (a) of this section requires that there be a meeting of creditors within a reasonable time after the order for relief in the case. The Bankruptcy Act and the current Rules of Bankruptcy Procedure provide for a meeting of creditors, and specify the time and manner of the meeting, and the business to be conducted. This bill leaves those matters to the rules. Under section 405(d) of the bill, the present rules will continue to govern until new rules are promulgated. Thus, pending the adoption of different rules, the present procedure for the meeting will continue.

Subsection (b) authorizes the court to order a meeting of equity security holders in cases where such a meeting would be beneficial or useful, for example, in a chapter 11 reorganization case where it may be necessary for the equity security holders to organize in order to be able to participate in the negotiation of a plan of reorganization.

Subsection (c) makes clear that the bankruptcy judge is to preside at the meeting of creditors.

§ 342. Notice

Subsection (a) of section 342 requires the clerk of the bankruptcy court to give notice of the order for relief. The rules will prescribe to whom the notice should be sent and in what manner notice will be given. The rules already prescribe such things, and they will continue to govern unless changed as provided in section 404(a) of the bill. Due process will certainly require notice to all creditors and equity security holders. State and Federal governmental representatives responsible for collecting taxes will also receive notice. In cases where the debtor is subject to regulation, the regulatory agency with jurisdiction will receive notice. In order to insure maximum notice to all parties in interest, the Rules will include notice by publication in appropriate cases and for appropriate issues. Other notices will be given as appropriate.

Subsections (b) and (c) are derived from section 21g of the Bankruptcy Act. They specify that the trustee may file notice of the commencement of the case in land recording offices in order to give notice of the pendency of the case to potential transferees of the debtor's real property. Such filing is unnecessary in the county in which the bankruptcy case is commenced. If notice is properly filed, a subsequent purchaser of the property will not be a bona fide purchaser. Otherwise, a purchaser, including a purchaser at a judicial sale, that has no knowledge of the case, is not prevented from obtaining the status of a bona fide purchaser by the mere commencement of the case. "County" is defined in title 1 of the United States Code to include other political subdivisions where counties are not used.

§ 343. Examination of the debtor

This section, derived from section 21a of the Bankruptcy Act, requires the debtor to appear at the meeting of creditors and submit to examination under oath. The purpose of the examination is to enable creditors and the trustee to determine if assets have improperly been disposed of or concealed or if there are grounds for objection to discharge. The scope of the examination under this section will be governed by the Rules of Bankruptcy Procedure, as it is today. *See* rules 205(d), 10–213(c), and 11–26. It is expected that the scope prescribed by these rules for liquidation cases, that is, "only the debtor's acts, conduct, or property, or any matter that may affect the administration of the estate, or the debtor's right to discharge" will remain substantially unchanged. In reorganization cases the examination would be broader, including inquiry into the liabilities and financial condition of the debtor, the operation of his business, and the desirability of the continuance thereof, and other matters relevant to the case and to the formulation of the plan. Examination of other persons in connection with the bankruptcy case is left completely to the rules, just as examination of witnesses in civil cases is governed by the Federal Rules of Civil Procedure.

§ 344. Self-incrimination; immunity

Part V of title 18 of the United States Code governs the granting of immunity to witnesses before Federal tribunals. The immunity provided under part V is only use immunity, not transactional immunity. Part V applies to all proceedings before Federal courts, before Federal grand juries, before administrative agencies, and before Congressional committees. It requires the Attorney General or the U.S. attorney to request or to approve any grant of immunity, whether before a court, grand jury, agency, or congressional committee.

This section carries part V over into bankruptcy cases. Thus, for a witness to be ordered to testify before a bankruptcy court in spite of a claim of privilege, the U.S. attorney for the district in which the court sits would have to request from the district court for that district the immunity order. The rule would apply to both debtors, creditors, and any other witnesses in a bankruptcy case. If the immunity were granted, the witness would be required to testify. If not, he could claim the privilege against self-incrimination.

Part V is a significant departure from current law. Under section 7a(10) of the Bankruptcy Act, a debtor is required to testify in all circumstances, but any testimony he gives may not be used against him in any criminal proceeding, except testimony given in any hearing on objections to discharge. With that exception, section 7a(10) amounts to a blanket grant of use immunity to all debtors. Immunity for other witnesses in bankruptcy courts today is governed by part V of title 18.

The consequences of a claim of privileges by a debtor under proposed law and under current law differ as well. Under section 14c(6) of current law, any refusal to answer a material question approved by the court will result in the denial of a discharge, even if the refusal is based on the privilege against self incrimination. Thus, the debtor is confronted with the choice between losing his discharge and opening himself up to possible criminal prosecution.

Under section 727(a)(6) of the proposed title 11, a debtor is only denied a discharge if he refuses to tesify after having been granted immunity. If the debtor claims the privilege and the U.S. attorney does not reqeust immunity from the district courts, then the debtor may refuse to testify and still retain his right to a discharge. It removes the Scylla and Charibdis choice for debtors that exists under the Bankruptcy Act.

§ 345. Money of estates

This section is a significant departure from section 61 of the Bankruptcy Act. It permits a trustee in a bankruptcy case to make such deposit of investment of the money of the estate for which he serves as will yield the maximum reasonable net return on the money, taking into account the safety of such deposit or investment. Under current law, the trustee is permitted to deposit money only with banking institutions. Thus, the trustee is generally unable to secure a high rate of return on money of estates pending distribution, to the detriment of creditors. Under this section, the trustee may make deposits in savings and loans, may purchase government bonds, or make such other deposit or investment as is appropriate. Under proposed 11 U.S.C. 541 (a)(6), and except as provided in subsection (c) of this section, any interest or gain realized on the deposit or investment of funds under this section will become property of the estate, and will thus enhance the recovery of creditors.

In order to protect the creditors, subsection (b) requires certain precautions against loss of the money so deposited or invested. The trustee must require from a person with which he deposits or invests money of an estate a bond in favor of the United States secured by approved corporate surety and conditioned on a proper accounting for all money deposited or invested and for any return on such money. Alternately, the trustee may require the deposit of securities of the kind specified in section 15 of title 6 of the United States Code, which governs the posting of security by banks that receive public moneys on deposit. These bonding requirements do not apply to deposits or investments that are insured or guaranteed the United States or a department, agency, or intrumentality of the United States, or that are backed by the full faith and credit of the United States.

These provisions do not address the question of aggregation of funds by a private chapter 13 trustee and are not to be construed as excluding such possibility. The Rules of Bankruptcy Procedure may provide for aggregation under appropriate circumstances and adequate safeguards in cases where there is a significant need, such as in districts in which there is a standing chapter 13 trustee. In such case, the interest or return on the funds would help defray the cost of administering the cases in which the standing trustee serves.

§ 346. Special tax provisions

Subsection (a) indicates that subsections (b), (c), (d), (e), (g), (h), (i), and (j) apply notwithstanding any State or local tax law, but are subject to Federal tax law.

Subsection (b)(1) provides that in a case concerning an individual under chapter 7 or 11 of title 11, income of the estate is taxable only to the estate and not to the debtor. The second sentence of the para-

graph provides that if such individual is a partner, the tax attributes of the partnership are distributable to the partner's estate rather than to the partner, except to the extent that section 728 of title 11 provides otherwise.

Subsection (b)(2) states a general rule that the estate of an individual is to be taxed as an estate. The paragraph is made subject to the remainder of section 346 and section 728 of title 11.

Subsection (b)(3) requires the accounting method, but not necessarily the accounting period, of the estate to be the same as the method used by the individual debtor.

Subsection (c)(1) states a general rule that the estate of a partnership or a corporated debtor is not a separate entity for tax purposes. The income of the debtor is to be taxed as if the case were not commenced, except as provided in the remainder of section 346 and section 728.

Subsection (c)(2) requires the trustee, except as provided in section 728 of title 11, to file all tax returns on behalf of the partnership or corporation during the case.

Subsection (d) indicates that the estate in a chapter 13 case is not a separate taxable entity and that all income of the estate is to be taxed to the debtor.

Subsection (e) establishes a business deduction consisting of allowed expenses of administration except for tax or capital expenses that are not otherwise deductible. The deduction may be used by the estate when it is a separate taxable entity or by the entity to which the income of the estate is taxed when it is not.

Subsection (f) imposes a duty on the trustee to comply with any Federal, State, or local tax law requiring withholding or collection of taxes from any payment of wages, salaries, commissions, dividends, interest, or other payments. Any amount withheld is to be paid to the taxing authority at the same time and with the same prioriy as the claim from which such amount withheld was paid.

Subsection (g)(1)(A) indicates that neither gain nor loss is recognized on the transfer by law of property from the debtor or a creditor to the estate. Subparagraph (B) provides a similar policy if the property of the estate is returned from the estate to the debtor other than by a sale of property to debtor. Subparagraph (C) also provides for nonrecognition of gain or loss in a case under chapter 11 if a corporate debtor transfers property to a successor corporation or to an affiliate under a joint plan. An exception is made to enable a taxing authority to cause recognition of gain or loss to the extent provided in IRC section 371 (as amended by section 109 of this bill).

Subsection (g)(2) provides that any of the three kinds of transferees specified in paragraph (1) take the property with the same character, holding period, and basis in the hands of the transferor at the time of such transfer. The transferor's basis may be adjusted under section 346(j)(5) even if the discharge of indebtedness occurs after the transfer of property. Of course, no adjustment will occur if the transfer is from the debtor to the estate or if the transfer is from an entity that is not discharged.

Subsection (h) provides that the creation of the estate of an individual under chapters 7 or 11 of title 11 as a separate taxable entity

does not affect the number of taxable years for purposes of computing loss carryovers or carrybacks. The section applies with respect to carryovers or carrybacks of the debtor transferred into the estate under section 346(i)(1) of title 11 or back to the debtor under section 346(i)(2) of title 11.

Subsection (i)(1) states a general rule that an estate that is a separate taxable entity nevertheless succeeds to all tax attributes of the debtor. The six enumerated attributes are illustrative and not exhaustive.

Subsection (i)(2) indicates that attributes passing from the debtor into an estate that is a separate taxable entity will return to the debtor if unused by the estate. The debtor is permitted to use any such attribute as though the case had not been comenced.

Subsection (i)(3) permits an estate that is a separate taxable entity to carryback losses of the estate to a taxable period of the debtor that ended before the case was filed. The estate is treated as if it were the debtor with respect to time limitations and other restrictions. The section makes clear that the debtor may not carryback any loss of his own from a tax year during the pendency of the case to such a period until the case is closed. No tolling of any period of limitation is provided with respect to carrybacks by the debtor of post-petition losses.

Subsection (j) sets forth seven special rules treating with the tax effects of forgiveness or discharge of indebtedness. The terms "forgiveness" and "discharge" are redundant, but are used to clarify that "discharge" in the context of a special tax provision in title 11 includes forgiveness of indebtedness whether or not such indebtedness is "discharged" in the bankruptcy sense.

Paragraph (1) states the general rule that forgiveness of indebtedness is not taxable except as otherwise provided in paragraphs (2)–(7). The paragraph is patterned after sections 268, 395, and 520 of the Bankruptcy Act.

Paragraph (2) disallows deductions for liabilities of a deductible nature in any year during or after the year of cancellation of such liabilities. For the purposes of this paragraph, "a deduction with respect to a liability" includes a capital loss incurred on the disposition of a capital asset with respect to a liability that was incurred in connection with the acquisition of such asset.

Paragraph (3) causes any net operating loss of a debtor that is an individual or corporation to be reduced by any discharge of indebtedness except as provided in paragraphs (2) or (4). If a deduction is disallowed under paragraph (2), then no double counting occurs. Thus, paragraph (3) will reflect the reduction of losses by liabilities that have been forgiven, including deductible liabilities or nondeductible liabilities such as repayment of principal on borrowed funds.

Paragraph (4) specifically excludes two kinds of indebtedness from reduction of net operating losses under paragraph (3) or from reduction of basis under paragraph (5). Subparagraph (A) excludes items of a deductible nature that were not deducted or that could not be deducted such as gambling losses or liabilities for interest owed to a relative of the debtor. Subparagraph (B) excludes indebtedness of a debtor that is an individual or corporation that resulted in deductions which did not offset income and that did not contribute to an unex-

pired net operating loss or loss carryover. In these situations, the debtor has derived no tax benefit so there is no need to incur an offsetting reduction.

Paragraph (5) provides a two-point test for reduction of basis. The paragraph replaces sections 270, 396, and 522 of the Bankruptcy Act. Subparagraph (A) sets out the maximum amount by which basis may be reduced—the total indebtedness forgiven less adjustments made under paragraphs (2) and (3). This avoids double counting. If a deduction is disallowed under paragraph (2) or a carryover is reduced under paragraph (3) then the tax benefit is neutralized, and there is no need to reduce basis. Subparagraph (B) reduces basis to the extent the debtor's total basis of assets before the discharge exceeds total preexisting liabilities still remaining after discharge of indebtedness. This is a "basis solvency" limitation which differs from the usual test of solvency because it measures against the remaining liabilities the benefit aspect of assets, their basis, rather than their value. Paragraph (5) applies so that any transferee of the debtor's property who is required to use the debtor's basis takes the debtor's basis reduced by the lesser of (A) and (B). Thus, basis will be reduced, but never below a level equal to undischarged liabilities.

Paragraph (6) specifies that basis need not be reduced under paragraph (5) to the extent the debtor treats discharged indebtedness as taxable income. This permits the debtor to elect whether to recognize income, which may be advantageous if the debtor anticipates subsequent net operating losses, rather than to reduce basis.

Paragraph (7) establishes two rules excluding from the category of discharged indebtedness certain indebtedness that is exchanged for an equity security issued under a plan or that is forgiven as a contribution to capital by an equity security holder. Subparagraph (A) creates the first exclusion to the extent indebtedness consisting of items not of a deductible nature is exchanged for an equity security, other than the interests of a limited partner in a limited partnership, issued by the debtor or is forgiven as a contribution to capital by an equity security holder. Subparagraph (B) excludes indebtedness consisting of items of a deductible nature, if the exchange of stock for debts has the same effect as a cash payment equal to the value of the equity security, in the amount of the fair market value of the equity security or, if less, the extent to which such exchange has such effect. The two provisions treat the debtor as if it had originally issued stock instead of debt. Subparagraph (B) rectifies the inequity under current law between a cash basis and accrual basis debtor concerning the issuance of stock in exchange for previous services rendered that were of a greater value than the stock. Subparagraph (B) also changes current law by taxing forgiveness of indebtedness to the extent that stock is exchanged for the accrued interest component of a security, because the recipient of such stock would not be regarded as having received money under the *Carman* doctrine.

§ 347. Unclaimed property

Section 347 is derived from Bankruptcy Act § 66. Subsection (a) requires the trustee to stop payment on any distribution check that is unpaid 90 days after the final distribution in a case under chapter

7 or 13. The unclaimed funds, and any other property of the estate are paid into the court and disposed of under chapter 129 of title 28, which requires the clerk of court to hold the funds for their owner for 5 years, after which they escheat to the Treasury.

Subsection (b) specifies that any property remaining unclaimed at the expiration of the time allowed in a chapter 9 or 11 case for presentation (exchange) of securities or the performance of any other act as a condition to participation in the plan reverts to the debtor or the entity acquiring the assets of the debtor under the plan. Conditions to participation under a plan include such acts as cashing a check, surrendering securities for cancellation, and so on. Similar provisions are found in section 96(d) and 205 of current law.

§ 348. Effect of conversion

This section governs the effect of the conversion of a case from one chapter of the bankruptcy code to another chapter. Subsection (a) specifies that the date of the filing of the petition, the commencement of the case, or the order for relief are unaffected by conversion, with some exceptions specified in subsections (b) and (c).

Subsection (b) lists certain sections in the operative chapters of the bankruptcy code in which there is a reference to "the order for relief under this chapter." In those sections, the reference is to be read as a reference to the conversion order if the case has been converted into the particular chapter. Subsection (c) specifies that notice is to be given of the conversion order the same as notice was given of the order for relief, and that the time the trustee (or debtor in possession) has for assuming or rejecting executory contracts recommences, thus giving an opportunity for a newly appointed trustee to familiarize himself with the case.

Subsection (d) provides for special treatment of claims that arise during chapter 11 or 13 cases before the case is converted to a liquidation case. With the exception of claims specified in proposed 11 U.S.C. 503(b) (administrative expenses), preconversion claims are treated the same as prepetition claims.

Subsection (e) provides that conversion of a case terminates the service of any trustee serving in the case prior to conversion.

§ 349. Effect of dismissal

Subsection (a) specifies that unless the court for cause orders otherwise, the dismissal of a case is without prejudice. The debtor is not barred from receiving a discharge in a later case of debts that were dischargeable in the case dismissed. Of course, this subsection refers only to pre-discharge dismissals. If the debtor has already received a discharge and it is not revoked, then the debtor would be barred under section 727(a) from receiving a discharge in a subsequent liquidation case for six years. Dismissal of an involuntary on the merits will generally not give rise to adequate cause so as to bar the debtor from further relief.

Subsection (b) specifies that the dismissal reinstates proceedings or custodianships that were superseded by the bankruptcy case, reinstates avoided transfers, reinstates voided liens, vacates any order, judgment, or transfer ordered as a result of the avoidance of a trans-

fer, and revests the property of the estate in the entity in which the property was vested at the commencement of the case. The court is permitted to order a different result for cause. The basic purpose of the subsection is to undo the bankruptcy case, as far as practicable, and to restore all property rights to the position in which they were found at the commencement of the case. This does not necessarily encompass undoing sales of property from the estate to a good faith purchaser. Where there is a question over the scope of the subsection, the court will make the appropriate orders to protect rights acquired in reliance on the bankruptcy case.

§ 350. Closing and reopening cases

Subsection (a) requires the court to close a bankruptcy case after the estate is fully administered and the trustee discharged. The Rules of Bankruptcy Procedure will provide the procedure for case closing. Subsection (b) permits reopening of the case to administer assets, to accord relief to the debtor, or for other cause. Though the court may permit reopening of a case so that the trustee may exercise an avoiding power, laches may constitute a bar to an action that has been delayed too long. The case may be reopened in the court in which it was closed. The rules will prescribe the procedure by which a case is reopened and how it will be conducted after reopening.

§ 361. Adequate protection

Sections 362, 363, and 364 require, in certain circumstances, that the court determine in noticed hearings whether the interest of a secured creditor or co-owner of property with the debtor is adequately protected in connection with the sale or use of property. The interests of which the court may provide protection in the ways described in this section include equitable as well as legal interests. For example, a right to enforce a pledge and a right to recover property delivered to a debtor under a consignment agreement or an agreement of sale or return are interests that may be entitled to protection. This section specifies means by which adequate protection may be provided but, to avoid placing the court in an administrative role, does not require the court to provide it. Instead, the trustee or debtor in possession or the creditor will provide or propose a protection method. If the party that is affected by the proposed action objects, the court will determine whether the protection provided is adequate. The purpose of this section is to illustrate means by which it may be provided and to define the limits of the concept.

The concept of adequate protection is derived from the fifth amendment protection of property interests as enunciated by the Supreme Court. See *Wright* v. *Union Central Life Ins. Co.*, 311 U.S. 273 (1940); *Louisville Joint Stock Land Bank* v. *Radford*, 295 U.S. 555 (1935).

The automatic stay also provides creditor protection. Without it, certain creditors would be able to pursue their own remedies against the debtor's property. Those who acted first would obtain payment of the claims in preference to and to the detriment of other creditors. Bankruptcy is designed to provide an orderly liquidation procedure under which all creditors are treated equally. A race of diligence by creditors for the debtor's assets prevents that.

Subsection (a) defines the scope of the automatic stay, by listing the acts that are stayed by the commencement of the case. The commencement or continuation, including the issuance of process, of a judicial, administrative, or other proceeding against the debtor that was or could have been commenced before the commencement of the bankruptcy case is stayed under paragraph (1). The scope of this paragraph is broad. All proceedings are stayed, including arbitration, administrative, and judicial proceedings. Proceeding in this sense encompasses civil actions and all proceedings even if they are not before governmental tribunals.

The stay is not permanent. There is adequate provision for relief from the stay elsewhere in the section. However, it is important that the trustee have an opportunity to inventory the debtor's position before proceeding with the administration of the case. Undoubtedly the court will lift the stay for proceedings before specialized or nongovernmental tribunals to allow those proceedings to come to a conclusion. Any party desiring to enforce an order in such a proceeding would thereafter have to come before the bankruptcy court to collect assets. Nevertheless, it will often be more appropriate to permit proceedings to continue in their place of origin, when no great prejudice to the bankruptcy estate would result, in order to leave the parties to their chosen forum and to relieve the bankruptcy court from many duties that may be handled elsewhere.

Paragraph (2) stays the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the bankruptcy case. Thus, execution and levy against the debtors' prepetition property are stayed, and attempts to collect a judgment from the debtor personally are stayed.

Paragraph (3) stays any act to obtain possession of property of the estate (that is, property of the debtor as of the date of the filing of the petition) or property from the estate (property over which the estate has control or possession). The purpose of this provision is to prevent dismemberment of the estate. Liquidation must proceed in an orderly fashion. Any distribution of property must be by the trustee after he has had an opportunity to familiarize himself with the various rights and interests involved and with the property available for distribution.

Paragraph (4) stays lien creation again ' property of the estate. Thus, taking possession to perfect a lien or obtaining court process is prohibited. To permit lien creation after bankruptcy would give certain creditors preferential treatment by making them secured instead of unsecured.

Paragraph (5) stays any act to create or enforce a lien against property of the debtor, that is, most property that is acquired after the date of the filing of the petition, property that is exempted, or property that does not pass to the estate, to the extent that the lien secures a prepetition claim. Again, to permit postbankruptcy lien creation or enforcement would permit certain creditors to receive preferential treatment. It may also circumvent the debtors' discharge.

Paragraph (6) prevents creditors from attempting in any way to collect a prepetition debt. Creditors in consumer cases occasionally telephone debtors to encourage repayment in spite of bankruptcy. Inexperienced, frightened, or ill-counseled debtors may succumb to sug-

gestions to repay notwithstanding their bankruptcy. This provision prevents evasion of the purpose of the bankruptcy laws by sophisticated creditors.

Paragraph (7) stays setoffs of mutual debts and credits between the debtor and creditors. As with all other paragraphs of subsection (a), this paragraph does not affect the right of creditors. It simply stays its enforcement pending an orderly examination of the debtor's and creditors' rights.

Subsection (b) lists seven exceptions to the automatic stay. The effect of an exception is not to make the action immune from injunction.

The court has ample other powers to stay actions not covered by the automatic stay. Section 105, of proposed title 11, derived from Bankruptcy Act § 2a(15), grants the power to issue orders necessary or appropriate to carry out the provisions of title 11. The district court and the bankruptcy court as its adjunct have all the traditional injunctive powers of a court of equity, 28 U.S.C. §§ 151 and 164 as proposed in S. 2266, § 201, and 28 U.S.C. § 1334, as proposed in S. 2266, § 216. Stays or injunctions issued under these other sections will not be automatic upon the commencement of the case, but will be granted or issued under the usual rules for the issuance of injunctions. By excepting an act or action from the automatic stay, the bill simply requires that the trustee move the court into action, rather than requiring the stayed party to request relief from the stay. There are some actions, enumerated in the exceptions, that generally should not be stayed automatically upon the commencement of the case, for reasons of either policy or practicality. Thus, the court will have to determine on a case-by-case basis whether a particular action which may be harming the estate should be stayed.

With respect to stays issued under other powers, or the application of the automatic stay, to governmental actions, this section and the other sections mentioned are intended to be an express waiver of sovereign immunity of the Federal Government, and an assertion of the bankruptcy power over State governments under the supremacy clause notwithstanding a State's sovereign immunity.

The first exception is of criminal proceedings against the debtor. The bankruptcy laws are not a haven for criminal offenders, but are designed to give relief from financial overextension. Thus, criminal actions and proceedings may proceed in spite of bankruptcy.

Paragraph (2) excepts from the stay the collection of alimony, maintenance or support from property that is not property of the estate. This will include property acquired after the commencement of the case, exempted property, and property that does not pass to the estate. The automatic stay is one means of protecting the debtor's discharge. Alimony, maintenance and support obligations are excepted from discharge. Staying collection of them, when not to the detriment of other creditors (because the collection effort is against property that is not property of the estate), does not further that goal. Moreover, it could lead to hardship on the part of the protected spouse or children.

Paragraph (3) excepts any act to perfect an interest in property to the extent that the trustee's rights and powers are limited under section 546(a) of the bankruptcy code. That section permits postpetition perfection of certain liens to be effective against the trustee. If

the act of perfection, such as filing, were stayed, the section would be nullified.

Paragraph (4) excepts commencement or continuation of actions and proceedings by governmental units to enforce police or regulatory powers. Thus, where a governmental unit is suing a debtor to prevent or stop violation of fraud, environmental protection, consumer protection, safety, or similar police or regulatory laws, or attempting to fix damages for violation of such a law, the action or proceeding is not stayed under the automatic stay.

Paragraph (5) makes clear that the exception extends to permit an injunction and enforcement of an injunction, and to permit the entry of a money judgment, but does not extend to permit enforcement of a money judgment. Since the assets of the debtor are in the possession and control of the bankruptcy court, and since they constitute a fund out of which all creditors are entitled to share, enforcement by a governmental unit of a money judgment would give it preferential treatment to the detriment of all other creditors.

Paragraph (6) excepts the setoff of any mutual debt and claim for commodity transactions.

Paragraph (7) excepts actions by the Secretary of Housing and Urban Development to foreclose or take possession in a case of a loan insured under the National Housing Act. A general exception for such loans is found in current sections 263 and 517, the exception allowed by this paragraph is much more limited.

Subsection (c) of section 362 specifies the duration of the automatic stay. Paragraph (1) terminates a stay of an act against property of the estate when the property ceases to be property of the estate, such as by sale, abandonment, or exemption. It does not terminate the stay against property of the debtor if the property leaves the estate and goes to the debtor. Paragraph (2) terminates the stay of any other act on the earliest of the time the case is closed, the time the case is dismissed, or the time a discharge is granted or denied (unless the debtor is a corporation or partnership in a chapter 7 case).

Subsection (c) governs automatic termination of the stay. Subsections (d) through (g) govern termination of the stay by the court on the request of a party in interest.

Subsection (d) requires the court, upon motion of a party in interest, to grant relief from the stay for cause, such as by terminating, annulling, modifying, or conditioning the stay. The lack of adequate protection of an interest in property is one cause for relief, but is not the only cause. Other causes might include the lack of any connection with or interference with the pending bankruptcy case. Generally, proceedings in which the debtor is a fiduciary, or involving postpetition activities of the debtor, need not be stayed because they bear no relationship to the purpose of the automatic stay, which is protection of the debtor and his estate from his creditors.

Upon the court's finding that the debtor has no equity in the property subject to the stay and that the property is not necessary to an effective reorganization of the debtor, the subsection requires the court grant relief from the stay. To aid in this determination, guidelines are established where the property subject to the stay is real

property. An exception to "the necessary to an effective reorganization" requirement is made for real property on which no business is being conducted other than operating the real property and activities incident thereto. The intent of this exception is to reach the single-asset apartment type cases which involve primarily tax-shelter investments and for which the bankruptcy laws have provided a too facile method to relay conditions, but not the operating shopping center and hotel cases where attempts at reorganization should be permitted. Property in which the debtor has equity but which is not necessary to an effective reorganization of the debtor should be sold under section 363. Hearings under this subsection are given calendar priority to ensure that court congestion will not unduly prejudice the rights of creditors who may be obviously entitled to relief from the operation of the automatic stay.

Subsection (e) provides protection that is not always available under present law. The subsection sets a time certain within which the bankruptcy court must rule on the adequacy of protection provided for the secured creditor's interest. If the court does not rule within 30 days from a request by motion for relief from the stay, the stay is automatically terminated with respect to the property in question. To accommodate more complex cases, the subsection permits the court to make a preliminary ruling after a preliminary hearing. After a preliminary hearing, the court may continue the stay only if there is a reasonable likelihood that the party opposing relief from the stay will prevail at the final hearing. Because the stay is essentially an injunction, the three stages of the stay may be analogized to the three stages of an injunction. The filing of the petition which gives rise to the automatic stay is similar to a temporary restraining order. The preliminary hearing is similar to the hearing on a preliminary injunction, and the final hearing and order are similar to the hearing and issuance or denial of a permanent injunction. The main difference lies in which party must bring the issue before the court. While in the injunction setting, the party seeking the injunction must prosecute the action, in proceedings for relief from the automatic stay, the enjoined party must move. The difference does not, however, shift the burden of proof. Subsection (g) leaves that burden on the party opposing relief from the stay (that is, on the party seeking continuance of the injunction) on the issue of adequate protection and existence of an equity. It is not, however, intended to be confined strictly to the constitutional requirement. This section and the concept of adequate protection are based as much on policy grounds as on constitutional grounds. Secured creditors should not be deprived of the benefit of their bargain. There may be situations in bankruptcy where giving a secured creditor an absolute right to his bargain may be impossible or seriously detrimental to the policy of the bankruptcy laws. Thus, this section recognizes the availability of alternate means of protecting a secured creditor's interest where such steps are a necessary part of the rehabilitative process. Though the creditor might not be able to retain his lien upon the specific collateral held at the time of filing, the purpose of the section is to insure that the secured creditor receives the value for which he bargained.

The section specifies two exclusive means of providing adequate protection, both of which may require an approximate determination of the value of the protected entity's interest in the property involved. The section does not specify how value is to be determined, nor does it specify when it is to be determined. These matters are left to case-by-case interpretation and development. In light of the restrictive approach of the section to the availability of means of providing adequate protection, this flexibility is important to permit the courts to adapt to varying circumstances and changing modes of financing.

Neither is it expected that the courts will construe the term value to mean, in every case, forced sale liquidation value or full going concern value. There is wide latitude between those two extremes although forced sale liquidation value will be a minimum.

In any particular case, especially a reorganization case, the determination of which entity should be entitled to the difference between the going concern value and the liquidation value must be based on equitable considerations arising from the facts of the case. Finally, the determination of value is binding only for the purposes of the specific hearing and is not to have a res judicata effect.

The first method of adequate protection outlined is the making of cash payments to compensate for the expected decrease in value of the opposing entity's interest. This provision is derived from *In re Bermec Corporation*, 445 F.2d 367 (2d Cir. 1971), though in that case it is not clear whether the payments offered were adequate to compensate the secured creditors for their loss. The use of periodic payments may be appropriate where, for example, the property in question is depreciating at a relatively fixed rate. The periodic payments would be to compensate for the depreciation and might, but need not necessarily, be in the same amount as payments due on the secured obligation.

The second method is the fixing of an additional or replacement lien on other property of the debtor to the extent of the decrease in value or actual consumption of the property involved. The purpose of this method is to provide the protected entity with an alternative means of realizing the value of the original property, if it should decline during the case, by granting an interest in additional property from whose value the entity may realize its loss. This is consistent with the view expressed in *Wright* v. *Union Central Life Ins. Co.*, 311 U.S. 273 (1940), where the Court suggested that it was the value of the secured creditor's collateral, and not necessarily his rights in specific collateral, that was entitled to protection.

The section makes no provision for the granting of an administrative priority as a method of providing adequate protection to an entity as was suggested in *In re Yale Express System, Inc.*, 384 F.2d 990 (2d Cir. 1967), because such protection is too uncertain to be meaningful.

§ *362. Automatic stay*

The automatic stay is one of the fundamental debtor protections provided by the bankruptcy laws. It gives the debtor a breathing spell from his creditors. It stops all collection efforts, all harassment, and all foreclosure actions. It permits the debtor to attempt a repayment

or reorganization plan, or simply to be relieved of the financial pressures that drove him into bankruptcy.

The action commenced by the party seeking relief from the stay is referred to as a motion to make it clear that at the expedited hearing under subsection (e), and at hearings on relief from the stay, the only issue will be the lack of adequate protection, the debtor's equity in the property, and the necessity of the property to an effective reorganization of the debtor, or the existence of other cause for relief from the stay. This hearing will not be the appropriate time at which to bring in other issues, such as counterclaims against the creditor, which, although relevant to the question of the amount of the debt, concern largely collateral or unrelated matters. This approach is consistent with that taken in cases such as *In re Essex Properties, Ltd.*, 430 F. Supp. 1112 (N.D.Cal. 1977), that an action seeking relief from the stay is not the assertion of a claim which would give rise to the right or obligation to assert counterclaims. Those counterclaims are not to be handled in the summary fashion that the preliminary hearing under this provision will be. Rather, they will be the subject of more complete proceedings by the trustee to recover property of the estate or to object to the allowance of a claim. However, this would not preclude the party seeking continuance of the stay from presenting evidence on the existence of claims which the court may consider in exercising its discretion. What is precluded is a determination of such collateral claims on the merits at the hearing.

§ 363. Use, sale, or lease of property

This section defines the right and powers of the trustee with respect to the use, sale, or lease of property and the rights of other parties that have interests in the property involved. It applies in both liquidation and reorganization cases.

Subsection (a) defines "cash collateral" as cash, negotiable instruments, documents of title, securities, deposit accounts, or other cash equivalents in which the estate and an entity other than the estate have an interest, such as a lien or a co-ownership interest. The definition is not restricted to property of the estate that is cash collateral on the date of the filing of the petition. Thus, if "non-cash" collateral is disposed of and the proceeds come within the definition of "cash collateral" as set forth in this subsection, the proceeds would be cash collateral as long as they remain subject to the original lien on the "non-cash" collateral under section 552(b). To illustrate, rents received from real property before or after the commencement of the case would be cash collateral to the extent that they are subject to a lien.

Subsection (b) permits the trustees to use, sell, or lease, other than in the ordinary course of business, property of the estate upon notice and opportunity for objections and hearing thereon.

Subsection (c) governs use, sale, or lease in the ordinary course of business. If the business of the debtor is authorized to be operated under § 721, 1108, or 1304 of the bankruptcy code, then the trustee may use, sell, or lease property in the ordinary course of business or enter

into ordinary course transactions without need for notice and hearing. This power is subject to several limitations. First, the court may restrict the trustee's powers in the order authorizing operation of the business. Second, with respect to cash collateral, the trustee may not use, sell, or lease cash collateral except upon court authorization after notice and a hearing, or with the consent of each entity that has an interest in such cash collateral. The same preliminary hearing procedure in the automatic stay section applies to a hearing under this subsection. In addition, the trustee is required to segregate and account for any cash collateral in the trustee's possession, custody, or control.

Under subsections (d) and (e), the use, sale, or lease of property is further limited by the concept of adequate protection. Sale, use, or lease of property in which an entity other than the estate has an interest may be effected only to the extent not inconsistent with any relief from the stay granted to that interest's holder. Moreover, the court may prohibit or condition the use, sale, or lease as is necessary to provide adequate protection of that interest. Again, the trustee has the burden of proof on the issue of adequate protection. Subsection (e) also provides that where a sale of the property is proposed, an entity that has an interest in such property may bid at the sale thereof and set off against the purchase price up to the amount of such entity's claim. No prior valuation under section 506(a) would limit this bidding right, since the bid at the sale would be determinative of value.

Subsection (f) permits sale of property free and clear of any interest in the property of an entity other than the estate. The trustee may sell free and clear if applicable nonbankruptcy law permits it, if the other entity consents, if the interest is a lien and the sale price of the property is greater than the amount secured by the lien, if the interest is in bona fide dispute, or if the other entity could be compelled to accept a money satisfaction of the interest in a legal or equitable proceeding. Sale under this subsection is subject to the adequate protection requirement. Most often, adequate protection in connection with a sale free and clear of other interests will be to have those interests attach to the proceeds of the sale.

At a sale free and clear of other interests, any holder of any interest in the property being sold will be permitted to bid. If that holder is the high bidder, he will be permitted to offset the value of his interest against the purchase price of the property. Thus, in the most common situation, a holder of a lien on property being sold may bid at the sale and, if successful, may offset the amount owed to him that is secured by the lien on the property (but may not offset other amounts owed to him) against the purchase price, and be liable to the trustee for the balance of the sale price, if any.

Subsection (g) permits the trustee to sell free and clear of any vested or contingent right in the nature of dower or curtesy.

Subsection (h) permits sale of a co-owner's interest in property in which the debtor had an undivided ownership interest such as a joint tenancy, a tenancy in common, or a tenancy by the entirety. Such a sale is permissible only if partition is impracticable, if sale of the estate's interest would realize significantly less for the estate that sale of the property free of the interests of the co-owners, and if the benefit to

the estate of such a sale outweighs any detriment to the co-owners. This subsection does not apply to a co-owner's interest in a public utility when a disruption of the utilities services could result.

Subsection (i) provides protections for co-owners and spouses with dower, curtesy, or community property rights. It gives a right of first refusal to the co-owner or spouse at the price at which the sale is to be consummated. Subsection (j) requires the trustee to distribute to the spouse or co-owner the appropriate portion of the proceeds of the sale, less certain administrative expenses.

Subsection (k) permits the trustee to use, sell, or lease property notwithstanding certain bankruptcy or ipso facto clauses that terminate the debtor's interest in the property or that work a forfeiture or modification of that interest. This subsection is not as broad as the anti-ipso facto provision in proposed 11 U.S.C. 541(c)(1).

Subsection (l) protects good faith purchasers of property sold under this section from a reversal on appeal of the sale authorization, unless the authorization for the sale and the sale itself were stayed pending appeal. The purchaser's knowledge of the appeal is irrelevant to the issue of good faith.

Subsection (m) is directed at collusive bidding on property sold under this section. It permits the trustee to void a sale if the price of the sale was controlled by an agreement among potential bidders. The trustees may also recover the excess of the value of the property over the purchase price, and may recover any costs, attorney's fees, or expenses incurred in voiding the sale or recovering the difference. In addition, the court is authorized to grant judgment in favor of the estate and against the collusive bidder if the agreement controlling the sale price was entered into in willful disregard of this subsection. The subsection does not specify the precise measure of damages, but simply provides for punitive damages, to be fixed in light of the circumstances.

§ 364. Obtaining credit

This section is derived from provisions in current law governing certificates of indebtedness, but is much broader. It governs all obtaining of credit and incurring of debt by the estate.

Subsection (a) authorizes the obtaining of unsecured credit and the incurring of unsecured debt in the ordinary course of business if the business of the debtor is authorized to be operated under section 721, 1108, or 1304. The debts so incurred are allowable as administrative expenses under section 503(b)(1). The court may limit the estate's ability to incur debt under this subsection.

Subsection (b) permits the court to authorize the trustee to obtain unsecured credit and incur unsecured debts other than in the ordinary course of business, such as in order to wind up a liquidation case, or to obtain a substantial loan in an operating case. Debt incurred under this subsection is allowable as an administrative expense under section 503(b)(1).

Subsection (c) is closer to the concept of certificates of indebtedness in current law. It authorizes the obtaining of credit and the incurring of debt with some special priority, if the trustee is unable to obtain unsecured credit under subsection (a) or (b). The various priorities

are (1) with priority over any or all administrative expenses; (2) secured by a lien on unencumbered property of the estate; or (3) secured by a junior lien on encumbered property. The priorities granted under this subsection do not interfer with existing property rights.

Subsection (d) grants the court the authority to authorize the obtaining of credit and the incurring of debt with a superiority, that is a lien on encumbered property that is senior or equal to the existing lien on the property. The court may authorize such a super-priority only if the trustee is otherwise unable to obtain credit, and if there is adequate protection of the original lien holder's interest. Again, the trustee has the burden of proof on the issue of adequate protection.

Subsection (e) provides the same protection for credit extenders pending an appeal of an authorization to incur debt as is provided under section 363(*l*) for purchasers: the credit is not affected on appeal by reversal of the authorization unless the authorization and the incurring of the debt were stayed pending appeal. The protection runs to a good faith lender, whether or not he knew of the pendency of the appeal.

A claim arising as a result of lending or borrowing under this section will be a priority claim, as defined in proposed section 507(a)(1), even if the claim is granted a super-priority over administrative expenses and is to be paid in advance of other first priority claims.

§ *365. Executory contracts and unexpired leases*

Subsection (a) of this section authorizes the trustee, subject to the court's approval, to assume or reject an executory contract or unexpired lease. Though there is no precise definition of what contracts are executory, it generally includes contracts on which performance remains due to some extent on both sides. A note is not usually an executory contract if the only performance that remains is repayment. Performance on one side of the contract would have been completed and the contract is no longer executory.

Because of the volatile nature of the commodities markets and the special provisions governing commodity broker liquidations in subchapter IV of chapter 7, the provisions governing distribution in section 765(a) will govern if any conflict between those provisions and the provisions of this section arise.

Subsections (b), (c), and (d) provide limitations on the trustee's powers. Subsection (b) requires the trustee to cure any default in the contract or lease and to provide adequate assurance of future performance if there has been a default, before he may assume. This provision does not apply to defaults under ipso facto or bankruptcy clauses, which is a significant departure from present law.

Subsection (b)(3) permits termination of leases entered into prior to the effective date of this title in liquidation cases if certain other conditions are met.

Subsection (b)(4) prohibits the trustee's assumption of an executory contract requiring the other party to make a loan or deliver equipment to or to issue a security of the debtor. The purpose of this subsection is to make it clear that a party to a transaction which is based upon the

financial strength of a debtor should not be required to extend new credit to the debtor whether in the form of loans, lease financing, or the purchase or discount of notes.

Subsection (b)(5) provides that in lease situations common to shopping centers, protections must be provided for the lessor if the trustee assumes the lease, including protection against decline in percentage rents, breach of agreements with other tenants, and preservation of the tenant mix. Protection for tenant mix will not be required in the office building situation.

Subsection (c) prohibits the trustee from assuming or assigning a contract or lease if applicable nonbankruptcy law excuses the other party from performance to someone other than the debtor, unless the other party consents. This prohibition applies only in the situation in which applicable law excuses the other party from performance independent of any restrictive language in the contract or lease itself.

Subsection (d) places time limits on assumption and rejection. In a liquidation case, the trustee must assume within 60 days (or within an additional 60 days, if the court, for cause, extends the time). If not assumed, the contract or lease is deemed rejected. In a rehabilitation case, the time limit is not fixed in the bill. However, if the other party to the contract or lease requests the court to fix a time, the court may specify a time within which the trustee must act. This provision will prevent parties in contractual or lease relationships with the debtor from being left in doubt concerning their status vis-a-vis the estate.

Subsection (e) invalidates ipso facto or bankruptcy clauses. These clauses, protected under present law, automatically terminate the contract or lease, or permit the other contracting party to terminate the contract or lease, in the event of bankruptcy. This frequently hampers rehabilitation efforts. If the trustee may assume or assign the contract under the limitations imposed by the remainder of the section, the contract or lease may be utilized to assist in the debtor's rehabilitation or liquidation.

The unenforcibility of ipso facto or bankruptcy clauses proposed under this section will require the courts to be sensitive to the rights of the nondebtor party to executory contracts and unexpired leases. If the trustee is to assume a contract or lease, the court will have to insure that the trustee's performance under the contract or lease gives the other contracting party the full benefit of his bargain.

This subsection does not limit the application of an ipso facto or bankruptcy clause if a new insolvency or receivership occurs after the bankruptcy case is closed. That is, the clause is not invalidated in toto, but merely made inapplicable during the case for the purposes of disposition of the executory contract or unexpired lease.

Subsection (f) partially invalidates restrictions on assignment of contracts or leases by the trustee to a third party. The subsection imposes two restrictions on the trustee: he must first assume the contract or lease, subject to all the restrictions on assumption found in the section, and adequate assurance of future performance must be provided to the other contracting party. Paragraph (3) of the subsection invalidates contractual provisions that permit termination or modification in the event of an assignment, as contrary to the policy of this subsection.

Subsection (g) defines the time as of which a rejection of an executory contract or unexpired lease constitutes a breach of the contract or lease. Generally, the breach is as of the date immediately preceding the date of the petition. The purpose is to treat rejection claims as prepetition claims. The remainder of the subsection specifies different times for cases that are converted from one chapter to another. The provisions of this subsection are not a substantive authorization to breach or reject an assumed contract. Rather, they prescribe the rules for the allowance of claims in case an assumed contract is breached, or if a case under chapter 11 in which a contract has been assumed is converted to a case under chapter 7 in which the contract is rejected.

Subsection (h) protects real property lessees of the debtor if the trustee rejects an unexpired lease under which the debtor is the lessor (or sublessor). The subsection permits the lessee to remain in possession of the leased property or to treat the lease as terminated by the rejection. The balance of the term of the lease referred to in paragraph (1) will include any renewal terms that are enforceable by the tenant, but not renewal terms if the landlord had an option to terminate. Thus, the tenant will not be deprived of his estate for the term for which he bargained. If the lessee remains in possession, he may offset the rent reserved under the lease against damages caused by the rejection, but does not have any affirmative rights against the estate for any damages after the rejection that result from the rejection.

Subsection (i) gives a purchaser of real property under a land installment sales contract similar protection. The purchaser, if the contract is rejected, may remain in possession or may treat the contract as terminated. If the purchaser remains in possession, he is required to continue to make the payments due, but may offset damages that occur after rejection. The trustee is required to deliver title, but is relieved of all other obligations to perform.

A purchaser that treats the contract as terminated is granted a lien on the property to the extent of the purchase price paid. A party with a contract to purchase land from the debtor has a lien on the property to secure the price already paid, if the contract is rejected and the purchaser is not yet in possession.

Subsection (k) relieves the trustee and the estate of liability for a breach of an assigned contract or lease that occurs after the assignment.

§ 366. Utility service

This section gives debtors protection from a cut-off of service by a utility because of the filing of a bankruptcy case. This section is intended to cover utilities that have some special position with respect to the debtor, such as an electric company, gas supplier, or telephone company that is a monopoly in the area so that the debtor cannot easily obtain comparable service from another utility. The utility may not alter, refuse, or discontinue service because of the nonpayment of a bill that would be discharged in the the bankruptcy case. Subsection (b) protects the utility company by requiring the trustee or the debtor to provide, within ten days, adequate assurance of payment for service provided after the date of the petition.

CHAPTER 5—CREDITORS, THE DEBTOR, AND THE ESTATE

SUBCHAPTER I—CREDITORS AND CLAIMS

§ 501. Filing of proofs of claims or interests

This section governs the means by which creditors and equity security holders present their claims or interests to the court. Subsection (a) permits a creditor to file a proof of claim or interest. An indenture trustee representing creditors may file a proof of claim on behalf of the creditors he represents.

This subsection is permissive only, and does not require filing of a proof of claim by any creditor. It permits filing where some purpose would be served, such as where a claim that appears on a list filed under proposed 11 U.S.C. 924 or 1111 was incorrectly stated or listed as disputed, contingent, or unliquidated, where a creditor with a lien is undersecured and asserts a claim for the balance of the debt owed him (his unsecured claim, as determined under proposed 11 U.S.C. 506(a)), or in a liquidation case where there will be a distribution of assets to the holders of allowed claims. In other instances, such as in no-asset liquidation cases, in situations where a secured creditor does not assert any claim against the estate and a determination of his claim is not made under proposed 11 U.S.C. 506, or in situations where the claim asserted would be subordinated and the creditor would not recover from the estate in any event, filing of a proof of claim may simply not be necessary. The Rules of Bankruptcy Procedure and practice under the law will guide creditors as to when filing is necessary and when it may be dispensed with. In general, however, unless a claim is listed in a chapter 9 or chapter 11 case and allowed as a result of the list, a proof of claim will be a prerequisite to allowance for unsecured claims, including priority claims and the unsecured portion of a claim asserted by the holder of a lien.

The Rules of Bankruptcy Procedure will set the time limits, the form, and the procedure for filing, which will determine whether claims are timely or tardily filed. The rules governing time limits for filing proofs of claims will continue to apply under section 405(d) of the bill. These previde a 6-month-bar date for the filing of tax claims.

Subsection (b) permits a codebtor, surety, or guarantor to file a proof of claim on behalf of the creditor to which he is liable if the creditor does not timely file a proof of claim.

In liquidation and individual repayment plan cases, the trustee or the debtor may file a proof of claim under subsection (c) if the creditor does not timely file. The purpose of this subsection is mainly to protect the debtor if the creditor's claim is nondischargeable. If the creditor does not file, there would be no distribution on the claim, and the debtor would have a greater debt to repay after the case is closed than if the claim were paid in part or in full in the case or under the plan.

Subsection (d) governs the filing of claims of the kinds specified in subsections (f), (g), (h), (i), or (j) of proposed 11 U.S.C. 502. The separation of this provision from the other claim-filing provisions in this section is intended to indicate that claims of the kind specified, which do not become fixed or do not arise until after the commence-

ment of the case, must be treated differently for filing purposes such as the bar date for filing claims. The rules will provide for later filing of claims of these kinds.

Subsection (e) gives governmental units (including tax authorities) at least six months following the date for the first meeting of creditors in a chapter 7 or chapter 13 case within which to file proof of claims.

§ 502. Allowance of claims or interests

A proof of claim or interest is prima facie evidence of the claim or interest. Thus, it is allowed under subsection (a) unless a party in interest objects. The rules and case law will determine who is a party in interest for purposes of objection to allowance. The case law is well developed on this subject today. As a result of the change in the liability of a general partner's estate for the debts of this partnership, see proposed 11 U.S.C. 723, the category of persons that are parties in interest in the partnership case will be expanded to include a creditor of a partner against whose estate the trustee of the partnership estate may proceed under proposed 11 U.S.C. 723(c).

Subsection (b) prescribes the grounds on which a claim may be disallowed. The court will apply these standards if there is an objection to a proof of claim. The burden of proof on the issue of allowance is left to the Rules of Bankruptcy Procedure. Under the current chapter XIII rules, a creditor is required to prove that his claim is free from usury, rule 13–301. It is expected that the rules will make similar provision for both liquidation and individual repayment plan cases. See Bankruptcy Act § 656(b); H.R. 31, 94th Cong., 1st sess., sec. 6–104(a) (1975).

Paragraph (1) requires disallowance if the claim is unenforceable against the debtor for any reason (such as usury, unconscionability, or failure of consideration) other than because it is contingent or unmatured. All such contingent or unmatured claims are to be liquidated by the bankruptcy court in order to afford the debtor complete bankruptcy relief; these claims are generally not provable under present law.

Paragraph (2) requires disallowance to the extent that the claim is for unmatured interest as of the date of the petition. Whether interest is matured or unmatured on the date of bankruptcy is to be determined without reference to any ipso facto or bankruptcy clause in the agreement creating the claim. Interest disallowed under this paragraph includes postpetition interest that is not yet due and payable, and any portion of prepaid interest that represents an original discounting of the claim, yet that would not have been earned on the date of bankruptcy. For example, a claim on a $1,000 note issued the day before bankruptcy would only be allowed to the extent of the cash actually advanced. If the original discount was 10 percent so that the cash advanced was only $900, then nonwithstanding the face amount of note, only $900 would be allowed. If $900 was advanced under the note some time before bankruptcy, the interest component of the note would have to be prorated and disallowed to the extent it was for interest after the commencement of the case.

Section 502(b) thus contains two principles of present law. First, interest stops accruing at the date of the filing of the petition, because any claim for unmatured interest is disallowed under this paragraph. Second, bankruptcy operates as the acceleration of the principal amount of all claims against the debtor. One unarticulated reason for this is that the discounting factor for claims after the commencement of the case is equivalent to contractual interest rate on the claim. Thus, this paragraph does not cause disallowance of claims that have not been discounted to a present value because of the irrebutable presumption that the discounting rate and the contractual interest rate (even a zero interest rate) are equivalent.

Paragraph (3) requires disallowance of a claim to the extent that the creditor may offset the claim against a debt owing to the debtor. This will prevent double recovery, and permit the claim to be filed only for the balance due. This follows section 68 of the Bankruptcy Act.

Paragraph (4) requires disallowance of a property tax claim to the extent that the tax due exceeds the value of the property. This too follows current law to the extent the property tax is ad valorem.

Paragraph (5) prevents overreaching by the debtor's attorneys and concealing of assets by debtors. It permits the court to examine the claim of a debtor's attorney independently of any other provision of this subsection, and to disallow it to the extent that it exceeds the reasonable value of the attorneys' services.

Postpetition alimony, maintenance or support claims are disallowed under paragraph (6). They are to be paid from the debtor's postpetition property, because the claims are nondischargeable.

Paragraph (7), derived from current law, limits the damages allowable to a landlord of the debtor. The history of this provision is set out at length in *Oldden* v. *Tonto Realty Co.*, 143 F.2d 916 (2d Cir. 1944). It is designed to compensate the landlord for his loss while not permitting a claim so large (based on a long-term lease) as to prevent other general unsecured creditors from recovering a dividend from the estate. The damages a landlord may assert from termination of a lease are limited to the rent reserved for the greater of one year or ten percent of the remaining lease term, not to exceed three years, after the earlier of the date of the filing of the petition and the date of surrender or repossession in a chapter 7 case and 3 years lease payments in a chapter 9, 11, or 13 case. The sliding scale formula for chapter 7 cases is new and designed to protect the long-term lessor. This subsection does not apply to limit administrative expense claims for use of the leased premises to which the landlord is otherwise entitled.

This paragraph will not overrule *Oldden*, or the proposition for which it has been read to stand: To the extent that a landlord has a security deposit in excess of the amount of his claim allowed under this paragraph, the excess comes into the estate. Moreover, his allowed claim is for his total damages, as limited by this paragraph. By virtue of proposed 11 U.S.C. 506(a) and 506(d), the claim will be divided into a secured portion and an unsecured portion in those cases in which the deposit that the landlord holds is less than his damages. As under *Oldden*, he will not be permitted to offset his actual damages against

his security deposit and then claim for the balance under this paragraph. Rather, his security deposit will be applied in satisfaction of the claim that is allowed under this paragraph.

As used in section 502(b)(7), the phrase "lease of real property" applies only to a "true" or "bona fide" lease and does not apply to financing leases of real property or interests therein, or to leases of such property which are intended as security.

Historically, the limitation on allowable claims of lessors of real property was based on two considerations. First, the amount of the lessor's damages on breach of a real estate lease was considered contingent and difficult to prove. Partly for this reason, claims of a lessor of real estate were not provable prior to the 1934 amendments to the Bankruptcy Act. Second, in a true lease of real property, the lessor retains all risk and benefits as to the value of the real estate at the termination of the lease. Historically, it was, therefore, considered equitable to limit the claims of a real estate lessor.

However, these considerations are not present in "lease financing" transactions where, in substance, the "lease" involves a sale of the real estate and the rental payments are in substance the payment of principal and interest on a secured loan or sale. In a financing lease the lessor is essentially a secured or unsecured creditor (depending upon whether his interest is perfected or not) of the debtor, and the lessor's claim should not be subject to the 502(b)(7) limitation. Financing "leases" are in substance installment sales or loans. The "lessors" are essentially sellers or lenders and should be treated as such for purposes of the bankruptcy law.

Whether a "lease" is true or bona fide lease or, in the alternative, a financing "lease" or a lease intended as security, depends upon the circumstances of each case. The distinction between a true lease and a financing transaction is based upon the economic substance of the transaction and not, for example, upon the locus of title, the form of the transaction or the fact that the transaction is denominated as a "lease". The fact that the lessee, upon compliance with the terms of the lease, becomes or has the option to become the owner of the leased property for no additional consideration or for nominal consideration indicates that the transaction is a financing lease or lease intended as security. In such cases, the lessor has no substantial interest in the leased property at the expiration of the lease term. In addition, the fact that the lessee assumes and discharges substantially all the risks and obligations ordinarily attributed to the outright ownership of the property is more indicative of a financing transaction than of a true lease. The rental payments in such cases are in substance payments of principal and interest either on a loan secured by the leased real property or on the purchase of the leased real property. See, e.g., Financial Accounting Standards Board Statement No. 13 and SEC Reg. S–X, 17 C.F.R. sec. 210.3–16(q)(1977); *cf. First National Bank of Chicago* v. *Irving Trust Co.*, 74 F. 2d 263 (2nd Cir. 1934); and Albenda and Lief, "Net Lease Financing Transactions Under the Proposed Bankruptcy Act of 1973," 30 Business Lawyer, 713 (1975).

Paragraph (8) is new. It tracks the landlord limitation on damages provision in paragraph (7) for damages resulting from the breach by the debtor of an employment contract, but limits the recovery to the

compensation reserved under an employment contract for the year following the earlier of the date of the petition and the termination of employment.

Subsection (c) requires the estimation of any claim liquidation of which would unduly delay the closing of the estate, such as a contingent claim, or any claim for which applicable law provides only an equitable remedy, such as specific performance. This subsection requires that all claims against the debtor be converted into dollar amounts.

Subsection (d) is derived from present law. It requires disallowance of a claim of a transferee of a voidable transfer in toto if the transferee has not paid the amount or turned over the property received as required under the sections under which the transferee's liability arises.

Subsection (e), also derived from present law, requires disallowance of the claim for reimbursement or contribution of a codebtor, surety or guarantor of an obligation of the debtor, unless the claim of the creditor on such obligation has been paid in full. The provision prevents competition between a creditor and his guarantor for the limited proceeds in the estate.

Subsection (f) specifies that "involuntary gap" creditors receive the same treatment as prepetition creditors. Under the allowance provisions of this subsection, knowledge of the commencement of the case will be irrelevant. The claim is to be allowed "the same as if such claim had arisen before the date of the filing of the petition." Under voluntary petition, proposed 11 U.S.C. 303(f), creditors must be permitted to deal with the debtor and be assured that their claims will be paid. For purposes of this subsection, "creditors" include governmental units holding claims for tax liabilities incurred during the period after the petition is filed and before the earlier of the order for relief or appointment of a trustee.

Subsection (g) gives entities injured by the rejection of an executory contract or unexpired lease, either under section 365 or under a plan or reorganization, a prepetition claim for any resulting damages, and requires that the injured entity be treated as a prepetition creditor with respect to that claim.

Subsection (h) gives a transferee of a setoff that is recovered by one trustee a prepetition claim for the amount recovered.

Subsection (i) answers the nonrecourse loan problem and gives the creditor an unsecured claim for the difference between the value of the collateral and the debt in response to the decision in *Great National Life Ins. Co.* v. *Pine Gate Associates, Ltd.*, Bankruptcy Case No. B75-4345A (N.D. Ga. Sept. 16, 1977).

The bill, as reported, deletes a provision in the bill as originally introduced (former sec. 502(i)) requiring a tax authority to file a proof of claim for recapture of an investment credit where, during title 11 proceedings, the trustee sells or otherwise disposes of property before the title 11 case began. The tax authority should not be required to submit a formal claim for a taxable event (a sale or other disposition of the asset) of whose occurrence the trustee necessarily knows better than the taxing authority. For procedural purposes, the recapture of investment credit is to be treated as an administrative expense, as to which only a request for payment is required.

§ 503. Allowance of administrative expenses

Subsection (a) of this section permits administrative expense claimants to file with the court a request for payment of an administrative expense. The Rules of Bankruptcy Procedure will specify the time, the form, and the method of such a filing.

Subsection (b) specifies the kinds of administrative expenses that are allowable in a case under the bankruptcy code. The subsection is derived mainly from section 64a(1) of the Bankruptcy Act, with some changes. The actual, necessary costs and expenses of preserving the estate, including wages, salaries, or commissions for services rendered after the order for relief, and any taxes on, measured by, or withheld from such wages, salaries, or commissions, are allowable as administrative expenses.

In general, administrative expenses include taxes which the trustee incurs in administering the debtor's estate, including taxes on capital gains from sales of property by the trustee and taxes on income earned by the estate during the case. Interest on tax liabilities and certain tax penalties incurred by the trustee are also included in this first priority.

Taxes which the Internal Revenue Service may find due after giving the trustee a so-called "quickie" tax refund and later doing an audit of the refund are also payable as administrative expenses. The tax code permits the trustee of an estate which suffers a net operating loss to carry back the loss against an earlier profit year of the estate or of the debtor and to obtain a tentative refund for the earlier year, subject, however, to a later full audit of the loss which led to the refund. The bill, in effect, requires the Internal Revenue Service to issue a tentative refund to the trustee (whether the refund was applied for by the debtor or by the trustee), but if the refund later proves to have been erroneous in amount, the Service can request that the tax attributable to the erroneous refund be payable by the estate as an administrative expense.

Postpetition payments to an individual debtor for services rendered to the estate are administrative expenses, and are not property of the estate when received by the debtor. This situation would most likely arise when the individual was a sole proprietor and was employed by the estate to run the business after the commencement of the case. An individual debtor in possession would be so employed, for example. *See Local Loan* v. *Hunt*, 292 U.S. 234, 243 (1943).

Compensation and reimbursement awarded officers of the estate under section 330 are allowable as administrative expenses. Actual, necessary expenses, other than compensation of a professional person, incurred by a creditor that files an involuntary petition, by a creditor that recovers property for the benefit of the estate, by a creditor that acts in connection with the prosecution of a criminal offense relating to the case, by a creditor, indenture, trustee, equity security holder, or committee of creditors or equity security holders (other than official committees) that makes a substantial contribution to a reorganization or municipal debt adjustment case, or by a superseded custodian, are all allowable administrative expenses. The phrase "substantial contribution in the case" is derived from Bankruptcy Act §§ 242 and 243. It does not require a contribution that leads to confirmation of a plan,

for in many cases, it will be a substantial contribution if the person involved uncovers facts that would lead to a denial of confirmation, such as fraud in connection with the case.

Paragraph (4) permits reasonable compensation for professional services rendered by an attorney or an accountant of an equity whose expense is compensable under the previous paragraph. Paragraph (5) permits reasonable compensation for an indenture trustee in making a substantial contribution in a reorganization or municipal debt adjustment case. Finally, paragraph (6) permits witness fees and mileage as prescribed under chapter 119 of title 28.

Section 504. Sharing of compensation

Section 504 prohibits the sharing of compensation, or fee splitting, among attorneys, other professionals, or trustees. The section provides only two exceptions: partners or associates in the same professional association, partnership, or corporation may share compensation inter se; and attorneys for petitioning creditors that join in a petition commencing an involuntary case may share compensation.

Section 505. Determination of tax liability

Subsections (a) and (b) are derived, with only stylistic changes, from section 2a (2A) of the Bankruptcy Act. They permit determination by the bankruptcy court of any unpaid tax liability of the debtor that has not been contested before or adjudicated by a judicial or administrative tribunal of competent jurisdiction before the bankruptcy case, and the prosecution by the trustee of an appeal from an order of such a body if the time for review or appeal has not expired before the commencement of the bankruptcy case. As under current Bankruptcy Act § 2a(2A), *Arkansas Corporation Commissioner* v. *Thompson*, 313 U.S. 132 (1941), remains good law to permit abstention where uniformity of assessment is of significant importance.

Section (c) deals with procedures for obtaining a prompt audit of tax returns filed by the trustee in a liquidation or reorganization case. Under the bill as originally introduced, a trustee who is "in doubt" concerning tax liabilities of the estate incurred during a title 11 proceeding could obtain a discharge from personal liability for himself and the debtor (but not for the debtor or the debtor's successor in a reorganization), provided that certain administrative procedures were followed. The trustee could request a prompt tax audit by the local, State, or Federal governmental unit. The taxing authority would have to notify the trustee and the court within sixty days whether it accepted the return or desired to audit the returns more fully. If an audit were conducted, the tax office would have to notify the trustee of any tax deficiency within 4 months (subject to an extension of time if the court approved). These procedures would apply only to tax years completed on or before the case was closed and for which the trustee had filed a tax return.

The committee bill eliminates the "in doubt" rule and makes mandatory (rather than optional) the trustee's reque for a prompt audit of the estate's tax returns. In many cases, the trustee could not be certain that his returns raised no doubt about possible tax issues. In

addition, it is desirable not to create a situation where the taxing authority asserts a tax liability against the debtor (as transferee of surplus assets, if any, returned to him) after the case is over; in any such situation, the debtor would be called on to defend a tax return which he did not prepare. Under the amendment, all disputes concerning these returns are to be resolved by the bankruptcy court, and both the trustee and the debtor himself do not then face potential post-bankruptcy tax liabilities based on these returns. This result would occur as to the debtor, however, only in a liquidation case.

In a reorganization in which the debtor or a successor to the debtor continues in existence, the trustee could obtain a discharge from personal liability through the prompt audit procedure, but the Treasury could still claim a deficiency against the debtor (or his successor) for additional taxes due on returns filed during the title 11 proceedings.

Section 506. Determination of secured status

Subsection (a) of this section separates an undersecured creditor's claim into two parts: He has a secured claim to the extent of the value of his collateral; and he has an unsecured claim for the balance of his claim. The subsection also provides for the valuation of claims which involve setoffs under section 553. While courts will have to determine value on a case-by-case basis, the subsection makes it clear that valuation is to be determined in light of the purpose of the valuation and the proposed disposition or use of the subject property. This determination shall be made in conjunction with any hearing on such disposition or use of property or on a plan affecting the creditor's interest. To illustrate, a valuation early in the case in a proceeding under sections 331–363 would not be binding upon the debtor or creditor at the time of confirmation of the plan. Throughout the bill, references to secured claims are only to the claim determined to be secured under this subsection, and not to the full amount of the creditor's claim. This provision abolishes the use of the terms "secured creditor" and "unsecured creditor" and substitutes in their places the terms "secured claim" and "unsecured claim."

Subsection (b) codifies current law by entitling a creditor with an oversecured claim to any reasonable fees (including attorney's fees), costs, or charges provided under the agreement under which the claim arose. These fees, costs, and charges aare secured claims to the extent that the value of the collateral exceeds the amount of the underlying claim.

Subsection (c) also codifies current law by permitting the trustee to recover from property the value of which is greater than the sum of the claims secured by a lien on that property the reasonable, necessary costs and expenses of preserving, or disposing of, the property. The recovery is limited to the extent of any benefit to the holder of such claim.

Subsection (d) provides that to the extent a secured claim is not allowed, its lien is void unless the holder had neither actual notice nor knowledge of the case, the lien was not listed by the debtor in a chapter 9 or 11 case or such claim was disallowed only under section 502(e).

Section 507. Priorities

Section 507 specifies the kinds of claims that are entitled to priority in distribution, and the order of their priority. Paragraph (1) grants first priority to allowed administrative expenses and to fees and

charges assessed against the estate under chapter 123 of title 28. Taxes included as administrative expenses under section 503(b)(1) of the bill generally receive the first priority, but the bill makes certain qualifications: Examples of these specially treated claims are the estate's liability for recapture of an investment tax credit claimed by the debtor before the title 11 case (this liability receives sixth priority) and the estate's employment tax liabilities on wages earned before, but paid after, the petition was filed (this liability generally receives the same priority as the wages).

"Involuntary gap" creditors, granted first priority under current law, are granted second priority by paragraph (2). This priority, covering claims arising in the ordinary course of the debtor's business or financial affairs after a title 11 case has begun but before a trustee is appointed or before the order for relief, includes taxes incurred during the conduct of such activities.

Paragraph (3) expands and increases the wage priority found in current section 64a(2). The amount entitled to priority is raised from $600 to $1800. The former figure was last adjusted in 1926. Inflation has made it nearly meaningless, and the bill brings it more than up to date. The three month limit of current law is retained, but is modified to run from the earlier of the date of the filing of the petition or the date of the cessation of the debtor's business. The priority is expanded to cover vacation, severance, and sick leave pay. The bill adds to the third priority so-called "trust fund" taxes, that is, withheld income taxes and the employees' share of the social security or railroad retirement taxes, but only to the extent that the wages on which taxes are imposed are themselves entitled to third priority.

The employer's share, the employment tax and the employer's share of the social security or railroad retirement tax on third priority compensation, is also included in the third priority category, but only if, and to the extent that the wages and related trust fund taxes have first been paid in full. Because of the claimants urgent need for their wages in the typical cases, the employer's taxes should not be paid before the wage claims entitled to priority, as well as the related trust fund taxes, are fully paid.

Paragraph (4) overrules *United States* v. *Embassy Restaurant*, 359 U.S. 29 (1958), which held that fringe benefits were not entitled to wage priority status. The bill recognizes the realities of labor contract negotiations, where fringe benefits may be substituted for wage demands. The priority granted is limited to claims for contributions to employee benefit plans such as pension plans, health or life insurance plans, and others, arising from services rendered within 120 days before the commencement of the case or the date of cessation of the debtor's business, whichever occurs first. The dollar limit placed on the total of all contributions payable under this paragraph is equal to the difference between the maximum allowable priority under paragraph (3), $1,800, times the number of employees covered by the plan less the actual distributions under paragraph (3) with respect to these employees.

Paragraph (5) is a new priority for consumer creditors—those who have deposited money in connection with the purchase, lease, or rental of property, or the purchase of services, for their personal, family, or

household use, that were not delivered or provided. The priority amount is not to exceed $600. In order to reach only those persons most deserving of this special priority, it is limited to individuals whose adjustable gross income from all sources derived does not exceed $20,000. See *Senate Hearings*, testimony of Prof. Vern Countryman, at pp. 848–849. The income of the husband and wife should be aggregated for the purposes of the $20,000 limit if either or both spouses assert such a priority claim.

The sixth priority is for certain taxes. Priority is given to income taxes for a taxable year that ended on or before the date of the filing of the petition, if the last due date of the return for such year occurred not more than 3 years immediately before the date on which the petition was filed (§ 507(a)(6)(A)(i)). For the purposes of this rule, the last due date of the return is the last date under any extension of time to file the return which the taxing authority may have granted the debtor.

Employment taxes and transfer taxes (including gift, estate, sales, use and other excise taxes) are also given sixth priority if the transaction or event which gave rise to the tax occurred before the petition date, provided that the required return or report of such tax liabilities was last due within 3 years before the petition was filed or was last due after the petition date (§ 507(a)(6)(A)(ii).) The employment taxes covered under this rule are the employer's share of the social security and railroad retirement taxes and required employer payments toward unemployment insurance.

Priority is given to income taxes and other taxes of a kind described in section 507(a)(6)(A) (i) and (ii) which the Federal, State, or local tax authority had assessed within 3 years after the last due date of the return, that is, including any extension of time to file the return, if the debtor filed in title 11 within 240 days after the assessment was made (§ 507(a)(6)(B)(i)). This rule may bring into the sixth priority the debtor's tax liability for some taxable years which would not qualify for priority under the general three-year rule of section 507(a)(6)(A).

The sixth priority category also includes taxes which the tax authority was barred by law from assessing or collecting at any time during the 300 days before the petition under title 11 was filed (§ 507(a)(6)(B)(ii)). In the case of certain Federal taxes, this preserves a priority for tax liabilities for years more than three years before the filing of the petition where the debtor and the Internal Revenue Service were negotiating over an audit of the debtor's returns or were engaged in litigation in the Tax Court. In such situations, the tax law prohibits the service's right to assess a tax deficiency until ninety days after the service sends the taxpayer a deficiency letter or, if the taxpayer files a petition in the Tax Court during that 90-day period, until the outcome of the litigation. A similar priority exists in present law, except that the taxing authority is allowed no time to assess and collect the taxes after the restrictions on assessment (discussed above) are lifted. Some taxpayers have exploited this loophole by filing in bankruptcy immediately after the end of the 90-day period or immediately after the close of Tax Court proceedings. The bill remedies this defect by preserving a priority for taxes the assessment of which was barred by law by giving the tax authority 300 days within

which to make the assessment after the lifting of the bar and then to collect or file public notice of its tax lien. Thus, if a taxpayer files a title 11 petition at any time during that 300-day period, the tax deficiency will be entitled to priority. If the petition is filed more than 300 days after the restriction on assessment was lifted, the taxing authority will not have priority for the tax deficiency.

Taxes for which an offer in compromise was withdrawn by the debtor, or rejected by a governmental unit, within 240 days before the petition date (§ 507(a)(6)(B)(iii)) will also receive sixth priority. This rule closes a loophole under present law under which, following an assessment of tax, some taxpayers have submitted a formal offer in compromise, dragged out negotiations with the taxing authority until the tax liability would lose priority under the three-year priority period of present law, and then filed in bankruptcy before the governmental unit could take collection steps.

Also included are certain taxes for which no return or report is required by law (§ 507(a)(6)(C)), if the taxable transaction occurred within three years before the petition was filed.

Taxes (not covered by the third priority) which the debtor was required by law to withhold or collect from others and for which he is liable in any capacity, regardless of the age of the tax claims (§ 507(a)(6)(D)) are included. This category covers the so-called "trust fund" taxes, that is, income taxes which an employer is required to withhold from the pay of his employees, the employees' shares of social security and railroad retirement taxes, and also Federal unemployment insurance. This category also includes excise taxes which a seller of goods or services is required to collect from a buyer and pay over to a taxing authority.

This category also covers the liability of a responsible corporate officer under the Internal Revenue Code for income taxes or for the employees' share of employment taxes which, under the tax law, the employer was required to withhold from the wages of employees. This priority will operate where a person found to be a responsible officer has himself filed a petition under title 11, and the priority covers the debtor's liability as an officer under the Internal Revenue Code, regardless of the age of the tax year to which the tax relates.

The priority rules under the bill governing employment taxes can be summarized as follows: In the case of wages earned and actually paid before the petition under title 11 was filed, the liability for the employees' share of the employment taxes, regardless of the prepetition year in which the wages were earned and paid. The employer's share of the employment taxes on all wages earned and paid before the petition receive sixth priority; generally, these taxes will be those for which a return was due within three years before the petition. With respect to wages earned by employees before the petition but actually paid by the trustee after the title 11 case commenced, taxes required to be withheld receives the same priority as the wages themselves. Thus, the employees' share of taxes on third priority wages also receives third priority. Taxes on the balance of such wages receive no priority and are collectible only as general claims because the wages themselves are payable only as general claims and liability for the taxes arises only to the extent the wages are actually paid. The em-

ployer's share of employment taxes on third priority wages earned before the petition but paid after the petition was filed receives third priority, but only if the wages in this category have first been paid in full. Assuming there are sufficient funds to pay third priority wages and the related employer taxes in full, the employer's share of taxes on the balance of wage payments becomes a general claim (because the wages themselves are payable as general claims). Both the employees' and the employer's share of employment taxes on wages earned and paid after the petition was filed receive first priority as administrative expenses.

Also covered by this sixth priority are property taxes required to be assessed within 3 years before the filing of the petition (§ 507(a)(6)(E)).

Taxes attributable to a tentative carryback adjustment received by the debtor before the petition was filed, such as a "quickie refund" received under section 6411 of the Internal Revenue Code (§ 507(a)(6)(F)) are included. However, the tax claim against the debtor will re- in a prepetition loss year for which the tax return was last due, including extensions, within 3 years before the petition was filed.

Taxes resulting from a recapture, occasioned by a transfer during bankruptcy, of a tax credit or deduction taken during an earlier tax year (§ 507(a)(6)(G)) are included. A typical example occurs when there is a sale by the trustee of depreciable property during the case and depreciation deductions taken in prepetition years are subject to recapture under section 1250 of the Code.

Taxes owed by the debtor as a transferee of assets from another person who is liable for a tax, if the tax claim against the transferor would have received priority in a chapter 11 case commenced by the transferor within 1 year before the date of the petition filed by the transferee (§507(a)(6)(H)), are included.

Also included are certain tax payments required to have been made during the 1 year immediately before the petition was filed, where the debtor had previously entered into a deferred payment agreement (including an offer in compromise) to pay an agreed liability in periodic installments but had become delinquent in one or more installments before the petition was filed (§507(a)(6)(I)). This priority covers all types of deferred or part payment agreements. The priority covers only installments which first became due during the 1 year before the petition but which remained unpaid at the date of the petition. The priority does not come into play, however, if before the case began or during the case, the debtor and the taxing authority agree to a further extension of time to pay the delinquent amounts.

Certain tax-related liabilities which are not true taxes or which are not collected by regular assessment procedures (§ 507(a)(6)(J)) are included. One type of liability covered in this category is the liability under section 3505 of the Internal Revenue Code of a lender who pays wages directly to employees of another employer or who supplies funds to an employer for the payment of wages. Another is the liability under section 6332 of the Internal Revenue Code, of a person who fails to turn over money or property of the taxpayer in response to a levy. Since the taxing authority must collect such a liability from the third

party by suit rather than normal assessment procedures, an extra year is added to the normal 3-year priority periods. If a suit was commenced by the taxing authority within the four-year period and before the petition was filed, the priority is also preserved, provided that the suit had not terminated more than 1 year before the date of the filing of the petition.

Also included are certain unpaid customs duties which have not grown unreasonably "stale" (§ 507(a)(6)(K)). These include duties on imports entered for consumption with 3 years before the filing of the petition if the duties are still unliquidated on the petition date. If an import entry has been liquidated (in general, liquidation is in an administrative determination of the value and tariff rate of the item) or reliquidated, within two years of the filing of the petition the customs liability is given priority. If the Secretary of the Treasury certifies that customs duties were not liquidated because of an investigation into possible assessment of anti-dumping or countervailing duties, or because of fraud penalties, duties not liquidated for this reason during the five years before the importer filed under title 11 also will receive priority.

Subsection (a) of this section also provides specifically that interest on sixth priority tax claims accrued before the filing of the petition is also entitled to sixth priority.

Subsection (b) of this section provides that any fine or penalty which represents compensation for actual pecuniary loss of a governmental unit, and which involves a tax liability entitled to sixth priority, is to receive the same priority.

Subsection (b) also provides that a claim arising from an erroneous refund or credit of tax is to be given the same priority as the tax to which the refund or credit relates.

Section 508. Effect of distribution in a foreign proceeding

This section prohibits a creditor from receiving any distribution in the bankruptcy case if he has received payment of a portion of his claim in a foreign proceeding, until the other creditors in the bankruptcy case in this country that are entitled to share equally with that creditor have received as much as he has in the foreign proceeding.

Section 509. Claims of codebtors

Section 509 deals with codebtors generally, and is in addition to the disallowance provision in section 502(e). This section is based on the notion that the only rights available to a surety, guarantor, or comaker are contribution, reimbursement, and subrogation. The right that applies in a particular situation will depend on the agreement between the debtor and the codebtor, and on whether and how payment was made by the codebtor to the creditor. The claim of a surety or codebtor for contribution or reimbursement is discharged even if the claim is never filed, as is any claim for subrogation even if the surety or codebtor chooses to file a claim for contribution or reimbursement instead.

Subsection (a) subrogates the codebtor (whether as a codebtor, surety, or guarantor) to the rights of the creditor, to the extent of any payment made by the codebtor to the creditor. Whether the creditor's claim was filed under section 501(a) or 501(b) is irrelevant. The right

of subrogation will exist even if the primary creditor's claim is allowed by virtue of being listed under proposed 11 U.S.C. 924 or 1111, and not by reason of a proof of claim.

Subsection (b) permits a subrogated codebtor to receive payments in the bankruptcy case only if the creditor has been paid in full, either through payments under the bankruptcy code or otherwise.

Section 510. Subordination or disallowance of claims

Subsection (a) requires the court to enforce subordination agreements. A subordination agreement will not be enforced, however, in a reorganization case in which the class that is the beneficiary of the agreement has accepted, as specified in proposed 11 U.S.C. 1126, a plan that waives their rights under the agreement. Otherwise, the agreement would prevent just what chapter 11 contemplates: that seniors may give up rights to juniors in the interest of confirmation of a plan and rehabilitation of the debtor. The subsection also requires the court to subordinate in payment any claim for rescission of a purchase or sale of a security of the debtor or of an affiliate, or for damages arising from the purchase or sale of such a security, to all claims and interests that are senior to the claim or interest represented by the security. Thus, the later subordination varies with the claim or interest involved. If the security is a debt instrument, the damages or rescission claim will be granted the status of a general unsecured claim. If the security is an equity security, the damages or rescission claim is subordinated to all creditors and treated the same as the equity security itself.

Subsection (b) authorizes the bankruptcy court, in ordering distribution of assets, to subordinate all or any part of any claim to all or any part of another claim, regardless of the priority ranking of either claim. In addition, any lien securing such a subordinated claim may be transferred to the estate. The bill provides, however, that any subordination ordered under this provision must be based on principles of equitable subordination. These principles are defined by case law, and have generally indicated that a claim may normally be subordinated only if its holder is guilty of misconduct. As originally introduced, the bill provided specifically that a tax claim may not be subordinated on equitable grounds. The bill deletes this express exception, but the effect under the amendment should be much the same in most situations since, under the judicial doctrine of equitable subordination, a tax claim would rarely be subordinated.

§ 511. Certain employment tax credits

This section prevents any reduction of the Federal tax credit against the Federal unemployment tax in a situation where the trustee makes a late payment of a contribution to a State unemployment compensation fund. Section 3302 of the Internal Revenue Code normally requires a reduction in the Federal credit for late contributions to a State fund (§ 3302). This reduction is, in substance, a penalty. However, it is inappropriate to impose the penalty on a trustee who may be barred from making a timely payment of the State contribution before the pendency of a title 11 case. The amendment made by the bill applies where the State and Federal unemployment tax contributions were paid by the trustee before or after the petition, regardless of whether the wages were earned before or after the petition.

Section 521. Debtor's duties

This section lists three duties of the debtor in a bankruptcy case. The Rules of Bankruptcy Procedure will specify the means of carrying out these duties. The first duty is to file with the court a list of creditors and, unless the court orders otherwise, a schedule of assets and liabilities and a statement of his financial affairs. Second, the debtor is required to cooperate with the trustee as necessary to enable the trustee to perform the trustee's duties. Finally, the debtor must surrender to the trustee all property of the estate, and any recorded information, including books, documents, records, and papers, relating to property of the estate. This phrase "recorded information, including books, documents, records, and papers," has been used here and throughout the bill as a more general term, and includes such other forms of recorded information as data in computer storage or in other machine readable forms.

The list in this section is not exhaustive of the debtor's duties. Others are listed elsewhere in proposed title 11, such as in section 343, which requires the debtor to submit to examination, or in the Rules of Bankruptcy Procedure, as continued by § 404(a) of S. 2266, such as the duty to attend any hearing on discharge, Rule 402(2).

Section 522. Exemptions

Subsection (a) of this section defines two terms: "dependent" includes the debtor's spouse, whether or not actually dependent; and "value" means fair market value as of the date of the filing of the petition.

Subsection (b) tracks current law. It permits a debtor the exemptions to which he is entitled under other Federal law and the law of the State of his domicile. Some of the items that may be exempted under Federal laws other than title 11 include:

Foreign Service Retirement and Disability payments, 22 U.S.C. 1104;
Social security payments, 42 U.S.C. 407;
Injury or death compensation payments from war risk hazards, 42 U.S.C. 1717;
Wages of fishermen, seamen, and apprentices, 46 U.S.C. 601;
Civil service retirement benefits, 5 U.S.C. 729, 2265;
Longshoremen's and Harbor Workers' Compensation Act death and disability benefits, 33 U.S.C. 916;
Railroad Retirement Act annuities and pensions, 45 U.S.C. 228 (L);
Veterans benefits, 45 U.S.C. 352(E);
Special pensions paid to winners of the Congressional Medal of Honor, 38 U.S.C. 3101; and
Federal homestead lands on debts contracted before issuance of the patent, 43 U.S.C. 175.

He may also exempt an interest in property in which the debtor had an interest as a tenant by the entirety or joint tenant to the extent that interest would have been exempt from process under applicable nonbankruptcy law.

Under proposed section 541, all property of the debtor becomes property of the estate, but the debtor is permitted to exempt certain

property from property of the estate under this section. Property may be exempted even if it is subject to a lien, but only the unencumbered portion of the property is to be counted in computing the "value" of the property for the purposes of exemption.

As under current law, the debtor will be permitted to convert nonexempt property into exempt property before filing a bankruptcy petition. The practice is not fraudulent as to creditors, and permits the debtor to make full use of the exemptions to which he is entitled under the law.

Subsection (c) insulates exempt property from prepetition claims other than tax claims (whether or not dischargeable), and other than alimony, maintenance, or support claims that are excepted from discharge. The bankruptcy discharge does not prevent enforcement of valid liens. The rule of *Long* v. *Bullard*, 117 U.S. 617 (1886), is accepted with respect to the enforcement of valid liens on nonexempt property as well as on exempt property. *Cf. Louisville Joint Stock Land Bank* v. *Radford*, 295 U.S. 555, 583 (1935).

Subsection (c)(3) permits the collection of dischargeable taxes from exempt assets Only assets exempted from levy under Section 6334 of the Internal Revenue Code or under applicable state or local tax law cannot be applied to satisfy these tax claims. This rule applies to prepetition tax claims against the debtor regardless of whether the claims do or do not receive priority and whether they are dischargeable or nondischargeable. Thus, even if a tax is dischargeable vis-a-vis the debtor's after-acquired assets, it may nevertheless be collectible from exempt property held by the estate. (Taxes incurred by the debtor's estate which are collectible as first priority administrative expenses are not collectible from the debtor's estate which are collectible as first priority administrative expenses are not collectible from the debtor's exempt assets.)

Subsection (d) protects the debtor's exemptions, either Federal or State, by making unenforceable in a bankruptcy case a waiver of exemptions or a waiver of the debtor's avoiding powers under the following subsections.

Subsection (e) protects the debtor's exemptions, his discharge, and thus his fresh start by permitting him to avoid certain liens on exempt property. The debtor may avoid a judicial lien on any property to the extent that the property could have been exempted in the absence of the lien, and may similarly avoid a nonpurchase-money security interest in certain household and personal goods. The avoiding power is independent of any waiver of exemptions.

Subsection (f) gives the debtor the ability to exempt property that the trustee recovers under one of the trustee's avoiding powers if the property was involuntarily transferred away from the debtor (such as by the fixing of a judicial lien) and if the debtor did not conceal the property. The debtor is also permitted to exempt property that the trustee recovers as the result of the avoiding of the fixing of certain security interests to the extent that the debtor could otherwise have exempted the property.

Subsection (g) provides that if the trustee does not exercise an avoiding power to recover a transfer of property that would be exempt, the debtor may exercise it and exempt the property, if the trans-

fer was involuntary and the debtor did not conceal the property. If the debtor wishes to preserve his right to pursue any action under this provision, then he must intervene in any action brought by the trustee based on the same cause of action. It is not intended that the debtor be given an additional opportunity to avoid a transfer or that the transferee should have to defend the same action twice. Rather, the section is primarily designed to give the debtor the rights the trustee could have, but has not, pursued. The debtor is given no greater rights under this provision than the trustee, and thus, the debtor's avoiding powers under proposed sections 544, 545, 547, and 548, are subject to proposed 546, as are the trustee's powers.

These subsections are cumulative. The debtor is not required to choose which he will use to gain an exemption. Instead, he may use more than one in any particular instance, just as the trustee's avoiding powers are cumulative.

Subsection (h) permits recovery by the debtor of property transferred by an avoided transfer from either the initial or subsequent transferees. It also permits preserving a transfer for the benefit of the debtor. In either event, the debtor may exempt the property recovered or preserved.

Subsection (i) makes clear that the debtor may exempt property under the avoiding subsections (f) and (h) only to the extent he has exempted less property than allowed under subsection (b).

Subsection (j) makes clear that the liability of the debtor's exempt property is limited to the debtor's aliquot share of the costs and expenses recovery of property that the trustee recovers and the debtor later exempts, and any costs and expenses of avoiding a transfer by the debtor that the debtor has not already paid.

Subsection (k) requires the debtor to file a list of property that he claims as exempt from property of the estate. Absent an objection to the list, the property is exempted. A dependent of the debtor may file it and thus be protected if the debtor fails to file the list.

Subsection (l) provides the rule for a joint case.

Section 523. Exceptions to discharge

This section specifies which of the debtor's debts are not discharged in a bankruptcy case, and certain procedures for effectuating the section. The provision in Bankruptcy Act § 17c granting the bankruptcy courts jurisdiction to determine dischargeability is deleted as unnecessary, in view of the comprehensive grant of jurisdiction prescribed in proposed 28 U.S.C. 1334(b), which is adequate to cover the full jurisdiction that the bankruptcy courts have today over dischargeability and related issues under Bankruptcy Act § 17c. The Rules of Bankruptcy Procedure will specify, as they do today, who may request determinations of dischargeability, subject, of course, to proposed 11 U.S.C. 523(c), and when such a request may be made. Proposed 11 U.S.C. 350, providing for reopening of cases, provides one possible procedure for a determination of dischargeability and related issues after a case is closed.

Subsection (a) lists nine kinds of debts excepted from discharge. Taxes that are excepted from discharge are set forth in paragraph (1). These include claims against the debtor which receive priority in the second, third and sixth categories (§ 507(a)(3)(B) and (C) and (6).

These categories include taxes for which the tax authority failed to file a claim against the estate or filed its claim late. Whether or not the taxing authority's claim is secured will also not affect the claim's nondischargability if the tax liability in question is otherwise entitled to priority.

Also included in the nondischargable debts are taxes for which the debtor had not filed a required return as of the petition date, or for which a return had been filed beyond its last permitted due date (§ 523 (a)(1)(B)). For this purpose, the date of the tax year to which the return relates is immaterial. The late return rule applies, however, only to the late returns filed within three years before the petition was filed, and to late returns filed after the petition in title 11 was filed. For this purpose, the taxable year in question need not be one or more of the three years immediately preceding the filing of the petition.

Tax claims with respect to which the debtor filed a fraudulent return, entry or invoice, or fraudulently attempted to evade or defeat any tax (§ 523(a)(1)(C)) are included. The date of the taxable year with regard to which the fraud occurred is immaterial.

Also included are tax payments due under an agreement for deferred payment of taxes, which a debtor had entered into with the Internal Revenue Service (or State or local tax authority) before the filing of the petition and which relate to a prepetition tax liability §523(a)(1)(D)) are also nondischargeable. This classification applies only to tax claims which would have received priority under section 507(a) if the taxpayer had filed a title 11 petition on the date on which the deferred payment agreement was entered into. This rule also applies only to installment payments which become due during and after the commencement of the title 11 case. Payments which had become due within one year before the filing of the petition receive sixth priority, and will be nondischargeable under the general rule of section 523(a)(1)(A)).

The above categories of nondischargeability apply to customs duties as well as to taxes.

Paragraph (2) provides that as under Bankruptcy Act § 17a(2), a debt for obtaining money, property, services, or a refinancing extension or renewal of credit by false pretenses, a false representation, or actual fraud, or by use of a statement in writing respecting the debtor's financial condition that is materially false, on which the creditor reasonably relied, and which the debtor made or published with intent to deceive, is excepted from discharge. This provision is modified only slightly from current section 17a(2). First, "actual fraud" is added as a ground for exception from discharge. Second, the creditor must not only have relied on a false statement in writing, but the reliance must have been reasonable. This codifies case law construing present section 17a(2). Third, the phrase "in any manner whatsoever" that appears in current law after "made or published" is deleted as unnecessary, the word "published" is used in the same sense that it is used in defamation cases.

Unscheduled debts are excepted from discharge under paragraph (3). The provision, derived from section 17a(3), follows current law, but clarifies some uncertainties generated by the case law construing 17a(3). The debt is excepted from discharge if it was not scheduled in

time to permit timely action by the creditor to protect his rights, unless the creditor had notice or actual knowledge of the case.

Paragraph (4) excepts debts for fraud incurred by the debtor while acting in a fiduciary capacity or for defalcation, embezzlement, or misappropriation.

Paragraph (5) provides that debts for willful and malicious conversion or injury by the debtor to another entity or the property of another entity are nondischargeable. Under this paragraph "willful" means deliberate or intentional. To the extent that *Tinker* v. *Colwell*, 139 U.S. 473 (1902), held that a less strict standard is intended, and to the extent that other cases have relied on *Tinker* to apply a "reckless disregard" standard, they are overruled.

Paragraph (6) excepts from discharge debts to a spouse, former spouse, or child of the debtor for alimony to, maintenance for, or support of the spouse or child. This language, in combination with the repeal of section 456(b) of the Social Security Act (42 U.S.C. 656(b)) by section 326 of the bill, will apply to make nondischargeable only alimony, maintenance, or support owed directly to a spouse or dependent. What constitutes alimony, maintenance, or support, will be determined under the bankruptcy law, not State law. Thus, cases such as *In re Waller*, 494 F.2d 447 (6th Cir. 1974), are overruled, and the result in cases such as *Fife* v. *Fife*, 1 Utah 2d 281, 265 P.2d 642 (1952) is followed. The proviso, however, makes nondischargeable any debts resulting from an agreement by the debtor to hold the debtor's spouse harmless on joint debts, to the extent that the agreement is in payment of alimony, maintenance, or support of the spouse, as determined under bankruptcy law considerations as to whether a particular agreement to pay money to a spouse is actually alimony or a property settlement.

Paragraph (7) makes nondischargeable certain liabilities for penalties including tax penalties if the underlying tax with respect to which the penalty was imposed is also nondischargeable (sec. 523(a)(7)). These latter liabilities cover those which, but are penal in nature, as distinct from so-called "pecuniary loss" penalties which, in the case of taxes, involve basically the collection of a tax under the label of a "penalty." This provision differs from the bill as introduced, which did not link the nondischarge of a tax penalty with the treatment of the underlying tax. The amended provision reflects the existing position of the Internal Revenue Service as to tax penalties imposed by the Internal Revenue Code (Rev. Rul. 68–574, 1968–2 C.B. 595).

Paragraph (8) follows generally current law and excerpts from discharge student loans until such loans have been due and owing for five years. Such loans include direct student loans as well as insured and guaranteed loans. This provision is intended to be self-executing and the lender or institution is not required to file a complaint to determine the nondischargeability of any student loan.

Paragraph (9) excepts from discharge debts that the debtor owed before a previous bankruptcy case concerning the debtor in which the debtor was denied a discharge other than on the basis of the six-year bar.

Subsection (b) of this section permits discharge in a bankruptcy case of an unscheduled debt from a prior case. This provision is carried over from Bankruptcy Act § 17b. The result dictated by the sub-

section would probably not be different if the subsection were not included. It is included nevertheless for clarity.

Subsection (c) requires a creditor who is owed a debt that may be excepted from discharge under paragraph (2), (4), or (5), (false statements, defalcation or larceny misappropriation, or willful and malicious injury) to initiate proceedings in the bankruptcy court for an exception to discharge. If the creditor does not act, the debt is discharged. This provision does not change current law.

Subsection (d) is new. It provides protection to a consumer debtor that dealt honestly with a creditor who sought to have a debt excepted from discharge on the ground of falsity in the incurring of the debt. The debtor may be awarded costs and a reasonable attorney's fee for the proceeding to determine the dischargeability of a debt under subsection (a)(2), if the court finds that the proceeding was frivolous or not brought by its creditor in good faith.

The purpose of the provision is to discourage creditors from initiating proceedings to obtaining a false financial statement exception to discharge in the hope of obtaining a settlement from an honest debtor anxious to save attorney's fees. Such practices impair the debtor's fresh start and are contrary to the spirit of the bankruptcy laws.

Section 524. Effect of discharge

Subsection (a) specifies that a discharge in a bankruptcy case voids any judgment to the extent that it is a determination of the personal liability of the debtor with respect to a prepetition debt, and operates as an injunction against the commencement or continuation of an action, the employment of process, or any act, including telephone calls, letters, and personal contacts, to collect, recover, or offset any discharged debt as a personal liability of the debtor, or from property of the debtor, whether or not the debtor has waived discharge of the debt involved. The injunction is to give complete effect to the discharge and to eliminate any doubt concerning the effect of the discharge as a total prohibition on debt collection efforts. This paragraph has been expanded over a comparable provision in Bankruptcy Act § 14f to cover any act to collect, such as dunning by telephone or letter, or indirectly through friends, relatives, or employers, harassment, threats of repossession, and the like. The change is consonant with the new policy forbidding binding reaffirmation agreements under proposed 11 U.S.C. 524(b), and is intended to insure that once a debt is discharged, the debtor will not be pressured in any way to repay it. In effect, the discharge extinguishes the debt, and creditors may not attempt to avoid that. The language "whether or not discharge of such debt is waived" is intended to prevent waiver of discharge of a particular debt from defeating the purposes of this section. It is directed at waiver of discharge of a particular debt, not waiver of discharge in toto as permitted under section 727(a)(9).

Subsection (a) also codifies the split discharge for debtors in community property states. If community property was in the estate and community claims were discharged, the discharge is effective against community creditors of the nondebtor spouse as well as of the debtor spouse.

Subsection (b) gives further effect to the discharge. It limits reaffirmation and allows the debtor a 30-day cooling off period after the

execution of the reaffirmation during which time he can change his mind and rescind the reaffirmation.

Subsection (c) grants an exception to the anti-reaffirmation provision. It permits reaffirmation in connection with the settlement of a proceeding to determine the dischargeability of the debt being reaffirmed, or in connection with a redemption agreement permitted under section 722. In either case, the reaffirmation agreement must be entered into in good faith and must be approved by the court.

Subsection (d) provides the discharge of the debtor does not affect co-debtors or guarantors.

Section 525. Protection against discriminatory treatment

This section is additional debtor protection. It codifies the result of *Perez* v. *Campbell*, 402 U.S. 637 (1971), which held that a State would frustrate the Congressional policy of a fresh start for a debtor if it were permitted to refuse to renew a drivers license because a tort judgment resulting from an automobile accident had been unpaid as a result of a discharge in bankruptcy.

Notwithstanding any other laws, section 525 prohibits a governmental unit from denying, revoking, suspending, or refusing to renew a license, permit, charter, franchise, or other similar grant to, from conditioning such a grant to, from discrimination with respect to such a grant against, deny employment to, terminate the employment of, or discriminate with respect to employment against, a person that is or has been a debtor or that is or has been associated with a debtor. The prohibition extends only to discrimination or other action based solely on the basis of the bankruptcy, on the basis of insolvency before or during bankruptcy prior to a determination of discharge, or on the basis of nonpayment of a debt discharged in the bankruptcy case (the *Perez* situation). It does not prohibit consideration of other factors, such as future financial responsibility or ability, and does not prohibit imposition of requirements such as net capital rules, if applied nondiscriminatorily.

In addition, the section is not exhaustive. The enumeration of various forms of discrimination against former bankrupts is not intended to permit other forms of discrimination. The courts have been developing the *Perez* rule. This section permits further development to prohibit actions by governmental or quasi-governmental organizations that perform licensing functions, such as a State bar association or a medical society, or by other organizations that can seriously affect the debtors' livelihood or fresh start, such as exclusion from a union on the basis of discharge of a debt to the union's credit union.

The effect of the section, and of further interpretations of the *Perez* rule, is to strengthen the anti-reaffirmation policy found in section 524(b). Discrimination based solely on nonpayment could encourage reaffirmations, contrary to the expressed policy.

The section is not so broad as a comparable section proposed by the Bankruptcy Commission, S. 236, 94th Cong., 1st Sess. § 4–508 (1975), which would have extended the prohibition to any discrimination, even by private parties. Nevertheless, it is not limiting either, as noted. The courts will continue to mark the contours of the anti-discrimination provision in pursuit of sound bankruptcy policy.

SUBCHAPTER III—THE ESTATE

Section 541. Property of the estate

This section defines property of the estate, and specifies what property becomes property of the estate. The commencement of a bankruptcy case creates an estate. Under paragraph (1) of subsection (a), the estate is comprised of all legal or equitable interest of the debtor in property, wherever located, as of the commencement of the case. The scope of this paragraph is broad. It includes all kinds of property, including tangible or intangible property, causes of action (see Bankruptcy Act § 70a(6)), and all other forms of property currently specified in section 70a of the Bankruptcy Act § 70a, as well as property recovered by the trustee under section 542 of proposed title 11, if the property recovered was merely out of the possession of the debtor, yet remained "property of the debtor." The debtor's interest in property also includes "title" to property, which is an interest, just as are a possessory interest, or leasehold interest, for example. The result of *Segal* v. *Rochelle*, 382 U.S. 375 (1966), is followed, and the right to a refund is property of the estate.

Though this paragraph will include choses in action and claims by the debtor against others, it is not intended to expand the debtor's rights against others more than they exist at the commencement of the case. For example, if the debtor has a claim that is barred at the time of the commencement of the case by the statute of limitations, then the trustee would not be able to pursue that claim, because he too would be barred. He could take no greater rights than the debtor himself had. But *see* proposed 11 U.S.C. 108, which would permit the trustee a tolling of the statute of limitations if it had not run before the date of the filing of the petition.

Paragraph (1) has the effect of overruling *Lockwood* v. *Exchange Bank*, 190 U.S. 294 (1903), because it includes as property of the estate all property of the debtor, even that needed for a fresh start. After the property comes into the estate, then the debtor is permitted to exempt it under proposed 11 U.S.C. 522, and the court will have jurisdiction to determine what property may be exempted and what remains as property of the estate. The broad jurisdictional grant in proposed 28 U.S.C. 1334 would have the effect of overruling *Lockwood* independently of the change made by this provision.

Paragraph (1) also has the effect of overruling *Lines* v. *Frederick*, 400 U.S. 18 (1970).

Situations occasionally arise where property ostensibly belonging to the debtor will actually not be property of the debtor, but will be held in trust for another. For example, if the debtor has incurred medical bills that were covered by insurance, and the insurance company had sent the payment of the bills to the debtor before the debtor had paid the bill for which the payment was reimbursement, the payment would actually be held in a constructive trust for the person to whom the bill was owed. This section and proposed 11 U.S.C. 545 also will not affect various statutory provisions that give a creditor of the debtor a lien that is valid outside as well as inside bankruptcy, or that creates a trust fund for the benefit of a creditor of the debtor. *See* Packers and Stockyards Act § 206, 7 U.S.C. 196.

Bankruptcy Act § 8 has been deleted as unnecessary. Once the estate is created, no interests in property of the estate remain in the debtor. Consequently, if the debtor dies during the case, only property exempted from property of the estate or acquired by the debtor after the commencement of the case and not included as property of the estate will be available to the representative of the debtor's probate estate. The bankruptcy proceeding will continue in rem with respect to property of the state, and the discharge will apply in personam to relieve the debtor, and thus his probate representative, of liability for dischargeable debts.

The estate also includes the interests of the debtor and the debtor's spouse in community property, subject to certain limitations; property that the trustee recovers under the avoiding powers; property that the debtor acquires by bequest, devise, inheritance, a property settlement agreement with the debtor's spouse, or as the beneficiary of a life insurance policy within 180 days after the petition; and proceeds, product, offspring, rents, and profits of or from property of the estate, except such as are earning from services performed by an individual debtor after the commencement of the case. Proceeds here is not used in a confining sense, as defined in the Uniform Commercial Code, but is intended to be a broad term to encompass all proceeds of property of the estate. The conversion in form of property of the estate does not change its character as property of the estate.

Subsection (b) excludes from property of the estate any power, such as a power of appointment, that the debtor may exercise solely for the benefit of an entity other than the debtor. This changes present law which excludes powers solely benefiting other persons but not other entities.

Subsection (c) invalidates restrictions on the transfer of property of the debtor, in order that all of the interests of the debtor in property will become property of the estate. The provisions invalidated are those that restrict or condition transfer of the debtor's interest, and those that are conditioned on the insolvency or financial condition of the debtor, on the commencement of a bankruptcy case, or on the appointment of a custodian of the debtor's property. Paragraph (2) of subsection (c), however, preserves restrictions on a transfer of a spendthrift trust that the restriction is enforceable nonbankruptcy law to the extent of the income reasonably necessary for the support of a debtor and his dependents.

Subsection (d), derived from section 70c of the Bankruptcy Act, gives the estate the benefit of all defenses available to the debtor as against an entity other than the estate, including such defenses as statutes of limitations, statutes of frauds, usury, and other personal defenses, and makes waiver by the debtor after the commencement of the case ineffective to bind the estate.

Section 541(e) confirms the current status under the Bankruptcy Act of bona fide secondary mortgage market transactions as the purchase and sale of assets. Mortgages or interests in mortgages sold in the secondary market should not be considered as part of the debtor's estate. To permit the efficient servicing of mortgages or interests in mortgages the seller often retains the original mortgage notes and related documents, and the purchaser records under State recording

statutes the purchaser's ownership of the mortgages or interests in mortgages purchased. Section 541(e) makes clear that the seller's retention of the mortgage documents and the purchaser's decision not to record do not impair the asset sale character of secondary mortgage market transactions. The committee notes that in secondary mortgage market transactions the parties may characterize their relationship as one of trust, agency, or independent contractor. The characterization adopted by the parties should not affect the statutes in bankruptcy of bona fide secondary mortgage market purchases and sales.

Section 542. Turnover of property to the estate

Subsection (a) of this section requires anyone holding property of the estate on the date of the filing of the petition, or property that the trustee may use, sell, or lease under section 363, to deliver it to the trustee. The subsection also requires an accounting. The holder of property of the estate is excused from the turnover requirement of this subsection if the property held is of inconsequential value to the estate. However, this provision must be read in conjunction with the remainder of the subsection, so that if the property is of inconsequential monetary value, yet has a significant use value for the estate, the holder of the property would not be excused from turnover.

Subsection (b) requires an entity that owes money to the debtor as of the date of the petition, or that holds money payable on demand or payable on order, to pay the money to the order of the trustee. An exception is made to the extent that the entity has a valid right of setoff, as recognized by section 553.

Subsection (c) provides an exception to subsections (a) and (b). It protects an entity that has neither actual notice nor actual knowledge of the case and that transfers, in good faith, property that is deliverable or payable to the trustee to someone other than to the estate or on order of the estate. This subsection codifies the result of *Bank of Marin* v. *England*, 385 U.S. 99 (1966), but does not go so far as to permit bank setoff in violation of the automatic stay, proposed 11 U.S.C. 362(a)(7), even if the bank offsetting the debtor's balance has no knowledge of the case.

Subsection (d) protects life insurance companies that are required by contract to make automatic premium loans from property that might otherwise be property of the estate.

Subsection (e) requires an attorney, accountant, or other professional that holds recorded information relating to the debtor's property or financial affairs, to surrender it to the trustee. This duty is subject to any applicable claim of privilege, such as attorney-client privilege. It is a new provision that deprives accountants and attorneys of the leverage that they have today, under State law lien provisions, to receive payment in full ahead of other creditors when the information they hold is necessary to the administration of the estate.

Section 543. Turnover of property by a custodian

This section requires a custodian appointed before the bankruptcy case to deliver to the trustee and to account for property that has come into his possession, custody, or control as a custodian. "Property

of the debtor" in section (a) includes property that was property of the debtor at the time the custodian took the property, but the title to which passed to the custodian. The section requires the court to protect any obligations incurred by the custodian, provide for the payment of reasonable compensation for services rendered and costs and expenses incurred by the custodian, and to surcharge the custodian for any improper or excessive disbursement, unless it has been approved by a court of competent jurisdiction. Subsection (d) reinforces the general abstention policy in section 305 by permitting the bankruptcy court to authorize the custodianship to proceed notwithstanding this section.

Section 544. Trustee as lien creditor and as successor to certain creditors and purchasers

Subsection (a) is the "strong arm clause" of current law, now found in Bankruptcy Act § 70c. It gives the trustee the rights of a creditor on a simple contract with a judicial lien on the property of the debtor as of the date of the petition; of a creditor with a writ of execution against the property of the debtor unsatisfied as of the date of the petition; and a bona fide purchaser of the real property of the debtor as of the date of the petition. "Simple contract" as used here is derived from Bankruptcy Act § 60a(4). The third status, that of a bona fide purchaser of real property, is new.

Subsection (b) is derived from current section 70e. It gives the trustee the rights of actual unsecured creditors under applicable law to void transfers. It follows *Moore* v. *Bay*, 284 U.S. 4 (1931), and overrules those cases that hold section 70e gives the trustee the rights of secured creditors.

Section 545. Statutory liens

This section permits the trustee to avoid the fixing of certain statutory liens. It is derived from subsections 67b and 67c of present law. Liens that first become effective on the bankruptcy or insolvency of the debtor are voidable by the trustee. Liens that are not perfected or enforceable on the date of the petition against a bona fide purchaser are voidable. If a transferee is able to perfect under section 546(a) and that perfection relates back to an earlier date, then in spite of the filing of the bankruptcy petition, the trustee would not be able to defeat the lien, because the lien would be perfected and enforceable against a bone fide purchaser that purchased the property on the date of the filing of the petition. Finally, a lien for rent or of distress for rent is voidable, whether the lien is a statutory lien or a common law lien of distress for rent. *See* proposed 11 U.S.C. 101(37); Bankruptcy Act § 67(c)(1)(C). The trustee may avoid a lien under this section even if the lien has been enforced by sale before the commencement of the case. To that extent, Bankruptcy Act § 67c(5) is not followed.

Subsection (b) limits the trustee's power to avoid tax liens under Federal, state, or local law. For example, under § 6323 of the Internal Revenue Code. Once public notice of a tax lien has been filed, the Government is generally entitled to priority over subsequent lienholders. However, certain purchasers who acquire an interest in certain specific kinds of personal property will take free of

an existing filed tax lien attaching to such property. Among the specific kinds of personal property which a purchaser can acquire free of an existing tax lien (unless the buyer knows of the existence of the lien) are stocks and securities, motor vehicles, inventory, and certain household goods. Under the present Bankruptcy Act (§ 67(c)(1)), the trustee may be viewed as a bona fide purchaser, so that he can take over any such designated items free of tax liens even if the tax authority has perfected its lien. However, the reasons for enabling a bona fide purchaser to take these kinds of assets free of an unfiled tax lien, that is, to encourage free movement of these assets in general commerce, do not apply to a trustee in a title 11 case, who is not in the same position as an ordinary bona fide purchaser as to such property. The bill accordingly adds a new subsection (b) to sec. 545 providing, in effect, that a trustee in bankruptcy does not have the right under this section to take otherwise specially treated items of personal property free of a tax lien filed before the filing of the petition.

Section 546. Limitations on avoiding powers

The trustee's rights and powers under certain of the avoiding powers are limited by section 546. First, if an interest holder against whom the trustee would have rights still has, under applicable nonbankruptcy law, and as of the date of the petition, the opportunity to perfect his lien against an intervening interest holder, then he may perfect his interest against the trustee. If applicable law requires seizure for perfection, then perfection is by notice to the trustee instead. The rights granted to a creditor under this subsection prevail over the trustee only if the transferee has perfected the transfer in accordance with applicable law, and that perfection relates back to a date that is before the commencement of the case.

The phrase "generally applicable law" relates to those provisions of applicable law that apply both in bankruptcy cases and outside of bankruptcy cases. For example, many State laws , under the Uniform Commercial Code, permit perfection of a purchase-money security interest to relate back to defeat an earlier levy by another creditor if the former was perfected within ten days of delivery of the property. U.C.C. §9-301(2). Such perfection would then be able to defeat an intervening hypothetical judicial lien creditor on the date of the filing of the petition. The purpose of the subsection is to protect, in spite of the surprise intervention of a bankruptcy petition, those whom State law protects by allowing them to perfect their liens or interests as of an effective date that is earlier than the date of perfection. It is not designed to give the States an opportunity to enact disguised priorities in the form of liens that apply only in bankruptcy case.

Subsection (b) specifies that the trustee's rights and powers under the strong arm clause, the successor to creditors provision, the preference section, and the postpetition transaction section are all subject to any statutory or common-law right of a seller, in the ordinary course of business, of goods to the debtor to reclaim the goods if the debtor received the goods on credit while insolvent. The seller must demand reclamation within ten days after receipt of the goods by the debtor. As under nonbankruptcy law, the right is subject to any superior rights of secured creditors. The purpose of the provision

is to recognize, in part, the validity of section 2–702 of the Uniform Commercial Code, which has generated much litigation, confusion, and divergent decisions in different circuits. The right is subject, however, to the power of the court to deny reclamation and protect the seller by granting him a priority as an administrative expense for his claim arising out of the sale of the goods.

Subsection (c) adds a statute of limitations to the use by the trustee of the avoiding powers. The limitation is two years after his appointment, or the time the case is closed or dismissed, whichever occurs later.

Section 547. Preferences

This section is a substantial modification of present law. It modernizes the preference provisions and brings them more into conformity with commercial practice and the Uniform Commercial Code.

Subsection (a) contains three definitions. Inventory, new value, and receivable are defined in their ordinary senses, but are defined to avoid any confusion or uncertainty surrounding the terms.

Subsection (b) is the operative provision of the section. It authorizes the trustee to avoid a transfer if five conditions are met. These are the five elements of a preference action. First, the transfer must be to or for the benefit of a creditor. Second, the transfer must be for or on account of an antecedent debt owed by the debtor before the transfer was made. Third, the transfer must have been made when the debtor was insolvent. Fourth, the transfer must have been made during the 90 days immediately preceding the commencement of the case. If the transfer was to an insider, the trustee may avoid the transfer if it was made during the period that begins one year before the filing of the petition and ends 90 days before the filing, if the insider to whom the transfer was made had reasonable cause to believe the debtor was insolvent at the time the transfer was made.

Finally, the transfer must enable the creditor to whom or for whose benefit it was made to receive a greater percentage of his claim than he would receive under the distributive provisions of the bankruptcy code. Specifically, the creditor must receive more than he would if the case were a liquidation case, if the transfer had not been made, and if the creditor received payment of the debt to the extent provided by the provisions of the code.

The phrasing of the final element changes the application of the greater percentage test from that employed under current law. Under this language, the court must focus on the relative distribution between classes as well as the amount that will be received by the members of the class of which the creditor is a member. The language also requires the court to focus on the allowability of the claim for which the preference was made. If the claim would have been entirely disallowed, for example, then the test of paragraph (5) will be met, because the creditor would have received nothing under the distributive provisions of the bankruptcy code.

The trustee may avoid a transfer of a lien under this section even if the lien has been enforced by sale before the commencement of the case.

Subsection (b)(2) of this section in effect exempts from the preference rules payments by the debtor of tax liabilities, regardless of their priority status.

Subsection (c) contains exceptions to the trustee's avoiding power. If a creditor can qualify under any one of the exceptions, then he is protected to that extent. If he can qualify under several, he is protected by each to the extent that he can qualify under each.

The first exception is for a transfer that was intended by all parties to be a contemporaneous exchange for new value, and was in fact substantially contemporaneous. Normally, a check is a credit transaction. However, for the purposes of this paragraph, a transfer involving a check is considered to be "intended to be contemporaneous", and if the check is presented for payment in the normal course of affairs, which the Uniform Commercial Code specifies as 30 days, U.C.C. § 3–503(2)(a), that will amount to a transfer that is "in fact substantially contemporaneous."

The second exception protects transfers in the ordinary course of business (or of financial affairs, where a business is not involved) tranfers. For the case of a consumer, the paragraph uses the phrase "financial affairs" to include such nonbusiness activities as payment of monthly utility bills. If the debt on account of which the transfer was made was incurred in the ordinary course of both the debtor and the transferee, if the transfer was made not later than 45 days after the debt was incurred, if the transfer itself was made in the ordinary course of both the debtor and the transferee, and if the transfer was made according to ordinary business terms, then the transfer is protected. The purpose of this exception is to leave undisturbed normal financial relations, because it does not detract from the general policy of the preference section to discourage unusual action by either the debtor or his creditors during the debtor's slide into bankruptcy.

The third exception is for enabling loans in connection with which the debtor acquires the property that the loan enabled him to purchase after the loan is actually made.

The fourth exception codifies the net result rule in section 60c of current law. If the creditor and the debtor have more than one exchange during the 90-day period, the exchanges are netted out according to the formula in paragraph (4). Any new value that the creditor advances must be unsecured in order for it to qualify under this exception.

Paragraph (5) codifies the improvement in position test, and thereby overrules such cases as *DuBay* v. *Williams*, 417 F.2d 1277 (C.A. 9, 1966), and *Grain Merchants of Indiana, Inc.* v. *Union Bank and Savings Co.*, 408 F.2d 209 (C.A. 7, 1969). A creditor with a security interest in a floating mass, such as inventory or accounts receivable, is subject to preference attack to the extent he improves his position during the 90-day period before bankruptcy. The test is a two-point test, and requires determination of the secured creditor's position 90 days before the petition and on the date of the petition. If new value was first given after 90 days before the case, the date on which it was first given substitutes for the 90-day point.

Paragraph (6) excepts statutory liens validated under section 545 from preference attack. It also protects transfers in satisfaction of such liens, and the fixing of a lien under section 365(j), which protects a vendee whose contract to purchase real property from the debtor is rejected.

Subsection (d), derived from section 67a of the Bankruptcy Act, permits the trustee to avoid a transfer to reimburse a surety that posts

a bond to dissolve a judicial lien that would have been avoidable under this section. The second sentence protects the surety from double liability.

Subsection (e) determines when a transfer is made for the purposes of the preference section. Paragraph (1) defines when a transfer is perfected. For real property, a transfer is perfected when it is valid against a bona fide purchasers. For personal property and fixtures, a transfer is perfected when it is valid against a creditor on a simple contract that obtains a judicial lien after the transfer is perfected. "Simple contract" as used here is derived from Bankruptcy Act § 60a(4). Paragraph (2) specifies that a transfer is made when it takes effect between the transferor and the transferee if it is perfected at or within 10 days after that time. Otherwise, it is made when the transfer is perfected. If it is not perfected before the commencement of the case, it is made immediately before the commencement of the case. Paragraph (3) specifies that a transfer is not made until the debtor has acquired rights in the property transferred. This provision, more than any other in the section, overrules *DuBay* and *Grain Merchants*, and in combination with subsection (b)(2), overrules *In re King-Porter Co.*, 446 F.2d 722 (5th Cir. 1971).

Subsection (e) is designed to reach the different results under the 1962 version of Article 9 of the U.C.C. and under the 1972 version because different actions are required under each version in order to make a security agreement effective between the parties.

Subsection (f) creates a presumption of insolvency for the 90 days preceding the bankruptcy case. The presumption is as defined in Rule 301 of the Federal Rules of Evidence, made applicable in bankruptcy cases by sections 224 and 225 of the bill. The presumption requires the party against whom the presumption exists to come forward with some evidence to rebut the presumption, but the burden of proof remains on the party in whose favor the presumption exists.

Section 548. Fraudulent transfers

This section is derived in large part from section 67d of the Bankruptcy Act. It permits the trustee to avoid transfers by the debtor in fraud of his creditors. Its history dates from the statute of 13 Eliz. c. 5 (1570).

The trustee may avoid fraudulent transfers or obligations if made with actual intent to hinder, delay, or defraud a past or future creditor. Transfers made for less than a reasonably equivalent consideration are also vulnerable if the debtor was or thereby becomes insolvent, was engaged in business with an unreasonably small capital, or intended to incur debts that would be beyond his ability to repay.

The trustee of a partnership debtor may avoid any transfer of partnership property to a partner in the debtor if the debtor was or thereby became insolvent.

If a transferee's only liability to the trustee is under this section, and if he takes for value and in good faith, then subsection (c) grants him a lien on the property transferred, or other similar protection.

Subsection (d) specifies that for the purposes of the fraudulent transfer section, a transfer is made when it is valid against a subsequent bona fide purchaser. If not made before the commencement of

the case, it is considered made immediately before then. Subsection (d) also defines "value" to mean property, or the satisfaction or securing of a present or antecedent debt, but does not include an unperformed promise to furnish support to the debtor or a relative of the debtor.

Section 549. Postpetition transactions

This section modifies section 70d of current law. It permits the trustee to avoid transfers of property that occur after the commencement of the case. The transfer must either have been unauthorized, or authorized under a section that protects only the transferor. Subsection (b) protects "involuntary gap" transferees to the extent of any value (including services, but not including satisfaction of a debt that arose before the commencement of the case), given after commencement in exchange for the transfer. Notice or knowledge of the transferee is irrelevant in determining whether he is protected under this provision.

Section 550. Liability of transferee of avoided transfer

Section 550 prescribes the liability of a transferee of an avoided transfer, and enunciates the separation between the concepts of avoiding a transfer and recovering from the transferee. Subsection (a) permits the trustee to recover from the initial transferee of an avoided transfer or from any immediate or mediate transferee of the initial transferee. The words "to the extent that" in the lead in to this subsection are designed to incorporate the protection of transferees found in proposed 11 U.S.C. 549(b) and 548(c). Subsection (b) limits the liability of an immediate or mediate transferee of the initial transferee if such secondary transferee takes for value, in good faith and without knowledge of the voidability of the transfer. An immediate or mediate good faith transferee of a protected secondary transferee is also shielded from liability. This subsection is limited to the trustee's right to recover from subsequent transferees under subsection (a)(2). It does not limit the trustee's rights against the initial transferee under subsection (a)(1). The phrase "good faith" in this paragraph is intended to prevent a transferee from whom the trustee could recover from transfering the recoverable property to an innocent transferee, and receiving a retransfer from him, that is, "washing" the transaction through an innocent third party. In order for the transferee to be excepted from liability under this paragraph, he himself must be a good faith transferee. Subsection (c) is a further limitation on recovery. It specifies that the trustee is entitled to only one satisfactory, under subsection (a), even if more than one transferee is liable.

Subsection (d) protects good faith transferees, either initial or subsequent, to the extent of the lesser of the cost of any improvement the transferee makes in the transferred property and the increase in value of the property as a result of the improvement. Paragraph (2) of the subsection defines improvement to include physical additions or changes to the property, repairs, payment of taxes on the property, payment of a debt secured by a lien on the property, discharge of a lien on the property, and preservation of the property.

Subsection (e) establishes a statute of limitations on avoidance by the Trustee. The limitation is one year after the avoidance of the transfer or the time the case is closed or dismissed, whichever is earlier.

Section 551. Automatic preservation of avoided transfer

This section is a change from present law. It specifies that any avoided transfer is automatically preserved for the benefit of the estate. Under current law, the court must determine whether or not the transfer should be preserved. The operation of the section is automatic, unlike current law, even though preservation may not benefit the estate in every instance. A preserved lien may be abandoned by the trustee under proposed 11 U.S.C. 554 if the preservation does not benefit the estate. The section as a whole prevents junior lienors from improving their position at the expense of the estate when a senior lien is avoided.

Section 552. Postpetition effect of security interest

Under the Uniform Commercial Code, article 9, creditors may take security interests in after-acquired property. Section 552 governs the effect of such a prepetition security interest in postpetition property. It applies to all security interests as defined in section 101(37) of the bankruptcy code, not only to U.C.C. security interests.

As a general rule, if a security agreement is entered into before the commencement of the case, then property that the estate acquires is not subject to the security interest created by a provision in the security agreement extending the security interest to after-acquired property. Subsection (b) provides an important exception consistent with the Uniform Commercial Code. If the security agreement extends to proceeds, product, offspring, rents, or profits of the property in question, then the proceeds would continue to be subject to the security interest pursuant to the terms of the security agreement and provisions of applicable law, except to the extent that where the estate acquires the proceeds at the expense of other creditors holding unsecured claims, the expenditure resulted in an improvement in the position of the secured party.

The exception covers the situation where raw materials, for example, are converted into inventory, or inventory into accounts, at some expense to the estate, thus depleting the fund available for general unsecured creditors, but is limited to the benefit inuring to the secured party thereby. Situations in which the estate incurs expense in simply protecting collateral are governed by 11 U.S.C. 506(c). In ordinary circumstances, the risk of loss in continued operations will remain with the estate.

Section 553. Setoff

This section preserves, with some changes, the right of setoff in bankruptcy cases now found in section 68 of the Bankruptcy Act. One exception to the right is the automatic stay, discussed in connection with proposed 11 U.S.C. 362. Another is the right of the trustee to use property under section 363 that is subject to a right of setoff.

The section states that the right of setoff is unaffected by the bankruptcy code except to the extent that the creditor's claim is disallowed, the creditor acquired (other than from the debtor) the claim during the 90 days preceding the case while the debtor was insolvent, the debt being offset was incurred for the purpose of obtaining a right of setoff, while the debtor was insolvent and during the 90-day prebankruptcy

period, or the creditor improved his position in the 90-day period (similar to the improvement in position test found in the preference section 547(c)(5)). Only the last exception is an addition to current law.

As under section 547(f), the debtor is presumed to have been insolvent during the 90 days before the case.

Section 554. Abandonment of property of the estate

Under this section the court may authorize the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value to the estate. Abandonment may be to any party with a possessory interest in the property abandoned. In order to aid administration of the case, subsection (b) deems the court to have authorized abandonment of any property that is scheduled under section 521(1) and that is not administered before the case is closed. That property is deemed abandoned to the debtor. Subsection (c) specifies that if property is neither abandoned nor administered it remains property of the estate.

CHAPTER 7—LIQUIDATION

SUBCHAPTER I—OFFICERS AND ADMINISTRATION

Section 701. Interim trustee

This section requires the court to appoint an interim trustee. The appointment must be made from the panel of private trustees established and maintained by the Director of the Administrative Office under proposed 28 U.S.C. 604(e).

Subsection (a) requires the appointment of an interim trustee to be made promptly after the order for relief, unless a trustee is already serving in the case, such as before a conversion from a reorganization to a liquidation case.

Subsection (b) specifies that the appointment of an interim trustee expires when the permanent trustee is elected or designated under section 702.

Subsection (c) makes clear that an interim trustee is a trustee in a case under the bankruptcy code.

Subsection (d) provides that in a commodity broker case where speed is essential the interim trustee must be appointed by noon of the business day immediately following the order for relief.

Section 702. Election of trustee

Subsection (a) of this section specifies which creditors may vote for a trustee. Only a creditor that holds an allowable, undisputed, fixed, liquidated, unsecured claim that is not entitled to priority, that does not have an interest materially adverse to the interest of general unsecured creditors, and that is not an insider may vote for a trustee. The phrase "materally adverse" is currently used in the Rules of Bankruptcy Procedure, rule 207(d). The application of the standard requires a balancing of various factors, such as the nature of the adversity. A creditor with a very small equity position would not be excluded from voting solely because he holds a small equity in the debtor. The Rules of Bankruptcy Procedure also currently provide

for temporary allowance of claims, and will continue to do so for the purposes of determining who is eligible to vote under this provision.

Subsection (b) permits creditors at the meeting of creditors to elect one person to serve as trustee in the case. Creditors holding at least 20 percent in amount of the claims specified in the preceding paragraph must request election before creditors may elect a trustee. Subsection (c) specifies that a candidate for trustee is elected trustee if creditors holding at least 20 percent in amount of those claims actually vote, and if the candidate receives a majority in amount of votes actually cast.

Subsection (d) specifies that if a trustee is not elected, then the interim trustee becomes the permanent trustee and serves in the case permanently.

Section 703. Successor trustee

If the office of trustee becomes vacant during the case, this section makes provision for the selection of a successor trustee. The office might become vacant through death, resignation, removal, failure to qualify under section 322 by posting bond, or the reopening of a case. If it does, creditors may elect a successor in the same manner as they may elect a trustee under the previous section. Pending the election of a successor, the court may appoint an interim trustee in the usual manner if necessary to preserve or prevent loss to the estate. If creditors do not elect a successor, or if a trustee is needed in a reopened case, then the court appoints a disinterested member of the panel of private trustees to serve.

Section 704. Duties of trustee

The essential duties of the trustee are enumerated in this section. Others, or elaborations on these, may be prescribed by the Rules of Bankruptcy Procedure to the extent not inconsistent with those prescribed by this section. The duties are derived from section 47a of the Bankruptcy Act.

The trustee's principal duty is to collect and reduce to money the property of the estate for which he serves, and to close up the estate as expeditiously as is compatible with the best interests of parties in interest. He must be accountable for all property received, and must investigate the financial affairs of the debtor. If a purpose would be served (such as if there are assets that will be distributed), the trustee is required to examine proofs of claims and object to the allowance of any claim that is improper. If advisable, the trustee must oppose the discharge of the debtor, which is for the benefit of general unsecured creditors whom the trustee represents.

The trustee is responsible to furnish such information concerning the estate and its administration as is requested by a party in interest. If the business of the debtor is authorized to be operated, then the trustee is required to file with governmental units charged with the responsibility for collection or determination of any tax arising out of the operation of the business periodic reports and summaries of the operation, including a statement of receipts and disbursements, and such other information as the court requires. He is required to give constructive notice of the commencement of the case in the manner specified under section 342(b).

Section 705. Creditors' committee

This section is derived from section 44b of the Bankruptcy Act without substantial change. It permits election by general unsecured creditors of a committee of not fewer than 3 members and not more than 11 members to consult with the trustee in connection with the administration of the estate, to make recommendations to the trustee respecting the performance of his duties, and to submit to the court any question affecting the administration of the estate. There is no provision for compensation or reimbursement of its counsel.

Section 706. Conversion

Subsection (a) of this section gives the debtor the one-time absolute right of conversion of a liquidation case to a reorganization or individual repayment plan case. If the case has already once been converted from chapter 11 or 13 to chapter 7, then the debtor does not have that right. The policy of the provision is that the debtor should always be given the opportunity to repay his debts, and a waiver of the right to convert a case is unenforceable.

Subsection (b) permits the court, on request of a party in interest and after notice and a hearing, to convert the case to chapter 11 at any time. The decision whether to convert is left in the sound discretion of the court, based on what will most inure to the benefit of all parties in interest.

Subsection (c) is part of the prohibition against involuntary chapter 13 cases, and prohibits the court from converting a case to chapter 13 without the debtor's consent.

Subsection (d) reinforces section 109 by prohibiting conversion to a chapter unless the debtor is eligible to be a debtor under that chapter.

Section 707. Dismissal

This section authorizes the court to dismiss a liquidation case only for cause, such as unreasonable delay by the debtor that is prejudicial to creditors or nonpayment of any fees and charges required under chapter 123 of title 28. These causes are not exhaustive, but merely illustrative. The section does not contemplate, however, that the ability of the debtor to repay his debts in whole or in part constitutes adequate cause for dismissal. To permit dismissal on that ground would be to enact a non-uniform mandatory chapter 13, in lieu of the remedy of bankruptcy.

SUBCHAPTER II—COLLECTION, LIQUIDATION, AND DISTRIBUTION OF THE ESTATE

Section 721. Authorization to operate business

This section is derived from section 2a(5) of the Bankruptcy Act. It permits the court to authorize the operation of any business of the debtor for a limited period, if the operation is in the best interest of the estate and consistent with orderly liquidation of the estate. An example is the operation of a watch company to convert watch movements and cases into completed watches which will bring much higher prices than the component parts would have brought.

Section 722. Redemption

This section is new and is broader than rights of redemption under the Uniform Commercial Code. It authorizes an individual debtor to redeem tangible personal property intended primarily for personal, family, or household use, from a lien securing a nonpurchase money dischargeable consumer debt. It applies only if the debtor's interest in the property is exempt or has been abandoned.

This right to redeem is a very substantial change from current law. To prevent abuses such as may occur when the debtor deliberately allows the property to depreciate in value, the debtor will be required to pay the fair market value of the goods or the amount of the claim if the claim is less. The right is personal to the debtor and not assignable.

Section 723. Rights of partnership trustee against general partners

This section is a significant departure from present law. It repeals the jingle rule, which, for ease of administration, denied partnership creditors their rights against general partners by permitting general partners' individual creditors to share in their estates first to the exclusion of partnership creditors. The result under this section more closely tracks generally applicable partnership law, without a significant administrative burden.

Subsection (a) specifies that each general partner in a partnership debtor is liable to the partnership's trustee for any deficiency of partnership property to pay in full all administrative expenses and all claims against the partnership.

Subsection (b) requires the trustee to seek recovery of the deficiency from any general partner that is not a debtor in a bankruptcy case. The court is empowered to order that partner to indemnify the estate or not to dispose of property pending a determination of the deficiency. The language of the subsection is directed to cases under the bankruptcy code. However, if, during the early stages of the transition period, a partner in a partnership is proceeding under the Bankruptcy Act while the partnership is proceeding under the bankruptcy code, the trustee should not first seek recovery against the Bankruptcy Act partner. Rather, the Bankruptcy Act partner should be deemed for the purposes of this section and the rights of the trustee to be proceeding under title 11.

Subsection (c) requires the partnership trustee to seek recovery of the full amount of the deficiency from the estate of each general partner that is a debtor in a bankruptcy case. The trustee will share equally with the partners' individual creditors in the assets of the partners' estates. Claims of partnership creditors who may have filed against the partner will be disallowed to avoid double counting.

Subsection (d) provides for the case where the total recovery from all of the bankrupt general partners is greater than the deficiency of which the trustee sought recovery. This case would most likely occur for a partnership with a large number of general partners. If the situation arises, the court is required to determine an equitable redistribution of the surplus to the estate of the general partners. The determination will be based on factors such as the relative liability of each of the general partners under the partnership agreement and

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the relative rights of each of the general partners in the profits of the enterprise under the partnership agreement.

Section 724. Treatment of certain liens

Subsection (a) of section 724 permits the trustee to avoid a lien that secures a fine, penalty, forfeiture, or multiple, punitive, or exemplary damages claim to the extent that the claim is not compensation for actual pecuniary loss. The subsection follows the policy found in section 57j of the Bankruptcy Act of protecting unsecured creditors from the debtor's wrongdoing, but expands the protection afforded. The lien is made voidable rather than void in chapter 7, in order to permit the lien to be revived if the case is converted to chapter 11, under which penalty liens are not voidable. To make the lien void would be to permit the filing of a chapter 7, the voiding of the lien, and the conversion to a chapter 11, simply to avoid a penalty lien, which should be valid in a reorganization case.

Subsection (b) governs tax liens. This provision retains the rule of present bankruptcy law (§ 67(C)(3) of the Bankruptcy Act) that a tax lien on personal property, if not avoidable by the trustee, is subordinated in payment to unsecured claims having a higher priority than unsecured tax claims. Those other claims may be satisfied from the amount that would otherwise have been applied to the tax lien, and any excess of the amount of the lien is then applied to the tax. Any personal property (or sale proceeds) remaining is to be used to satisfy claims secured by liens which are junior to the tax lien. Any proceeds remaining are next applied to pay any unpaid balance of the tax lien.

Subsection (d) specifies that any statutory lien whose priority is determined in the same manner as a tax lien is to be treated as a tax lien under this section, even if the lien does not secure a claim for taxes. An example is the ERISA lien.

Section 725. Disposition of certain property

This section requires the court to determine the appropriate disposition of property in which the estate and an entity other than the estate have an interest. It would apply, for example, to property subject to a lien or property co-owned by the estate and another entity. The court must make the determination with respect to property that is not disposed of under another section of the bankruptcy code, such as by abandonment under section 554, by sale or distribution under 363, or by allowing foreclosure by a secured creditor by lifting the stay under section 362. The purpose of the section is to give the court appropriate authority to ensure that collateral or its proceeds is returned to the proper secured creditor, that consigned or bailed goods are returned to the consignor or bailor, and so on. Current law is curiously silent on this point, though case law has grown to fill the void. The section is in lieu of a section that would direct a certain distribution to secured creditors. It gives the court greater flexibility to meet the circumstances, and it is broader, permitting disposition of property subject to a co-ownership interest.

Section 726. Distribution of property of the estate

This section is the general distribution section for liquidation cases. It dictates the order in which distribution of property of the estate,

which has usually been reduced to money by the trustee under the requirements of section 704(1).

First, property is distributed among priority claimants, as determined by section 507, and in the order prescribed by section 507. Second, distribution is to general unsecured creditors. This class excludes priority creditors and the two classes of subordinated creditors specified below. The provision is written to permit distribution to creditors that tardily file claims if their tardiness was due to lack of notice or knowledge of the case. Though it is in the interest of the estate to encourage timely filing, when tardy filing is not the result of a failure to act by the creditor, the normal subordination penalty should not apply. Third distribution is to general unsecured creditors who tardily file. Fourth distribution is to holders of fine, penalty, forfeiture, or multiple, punitive, or exemplary damage claims. More of these claims are disallowed entirely under present law. They are simply subordinated here.

Paragraph (4) provides that punitive penalties, including prepetition tax penalties, are subordinated to the payment of all other classes of claims, except claims for interest accruing during the case. In effect, these penalties are payable out of the estate's assets only if and to the extent that a surplus of assets would otherwise remain at the close of the case for distribution back to the debtor.

Paragraph (5) provides that postpetition interest on prepetition claims is also to be paid to the creditor in a subordinated position. Like prepetition penalties, such interest will be paid from the estate only if and to the extent that a surplus of assets would otherwise remain for return to the debtor at the close of the case.

This section also specifies that interest accrued on all claims (including priority and nonpriority tax claims) which accrued before the date of the filing of the title 11 petition is to be paid in the same order of distribution of the estate's assets as the principal amount of the related claims.

Any surplus is paid to the debtor under paragraph (6).

Subsection (b) follows current law. It specifies that claims within a particular class are to be paid pro rata. This provision will apply, of course, only when there are inadequate funds to pay the holders of claims of a particular class in full. The exception found in the section, which also follows current law, specifies that liquidation administrative expenses are to be paid ahead of reorganization administrative expenses if the case has been converted from a reorganization case to a liquidation case, or from an individual repayment plan case to a liquidation case.

Subsection (c) governs distributions in cases in which there is community property and other property of the estate. The section requires the two kinds of property to be segregated. The distribution is as follows: First, administrative expenses are to be paid, as the court determines on any reasonable equitable basis, from both kinds of property. The court will divide administrative expenses according to such factors as the amount of each kind of property in the estate, the cost of preservation and liquidation of each kind of property, and whether any particular administrative expenses are attributable to one kind of property or the other. Second, claims are to be paid as provided

under subsection (a) (the normal liquidation case distribution rules) in the following order and manner: First, community claims against the debtor or the debtor's spouse are paid from community property, except such as is liable solely for the debts of the debtor.

Second, community claims against the debtor, to the extent not paid under the first provision, are paid from community property that is solely liable for the debts of the debtor. Third, community claims, to the extent they remain unpaid, and all other claims against the debtor, are paid from noncommunity property. Fourth, if any community claims against the debtor or the debtor's spouse remain unpaid, they are paid from whatever property remains in the estate. This would occur if community claims against the debtor's spouse are large in amount and most of the estate's property is property solely liable, under nonbankruptcy law, for debts of the debtor.

The marshalling rules in this section apply only to property of the estate. However, they will provide a guide to the courts in the interpretation of proposed 11 U.S.C. 725, relating to distribution of collateral, in cases in which there is community property. If a secured creditor has a lien on both community and non-community property, the marshalling rules here—by analogy would dictate that the creditor be satisfied first out of community property, and then out of separate property.

Section 727. Discharge

This section is the heart of the fresh start provisions of the bankruptcy law. Subsection (a) requires the court to grant a debtor a discharge unless one of nine conditions is met. The first condition is that the debtor is not an individual. This is a change from present law, under which corporations and partnerships may be discharged in liquidation cases, though they rarely are. The change in policy will avoid trafficking in corporate shells and in bankrupt partnerships. "Individual" includes a deceased individual, so that if the debtor dies during the bankruptcy case, he will nevertheless be released from his debts, and his estate will not be liable for them. Creditors will be entitled to only one satisfaction—from the bankruptcy estate and not from the probate estate.

The next three grounds for denial of discharge center on the debtor's wrongdoing in or in connection with the bankruptcy case. They are derived from Bankruptcy Act § 14c. If the debtor, with intent to hinder, delay, or defraud his creditors or an officer of the estate, has transferred, removed, destroyed, mutilated, or concealed, or has permitted any such action with respect to, property of the debtor within the year preceding the case, or property of the estate after the commencement of the case, then the debtor is denied discharge. The debtor is also denied discharge if he has concealed, destroyed, mutilated, falsified, or failed to keep or preserve any books and records from which his financial condition might be ascertained, unless the act or failure to act was justified under all the circumstances of the case. The fourth ground for denial of discharge is the commission of a bankruptcy crime, although the standard of proof is preponderance of the evidence rather than proof beyond a reasonable doubt. These crimes include the making of a false oath or account, the use or presentation of a false

claim, the giving or receiving of money for acting or forbearing to act, and the withholding from an officer of the estate entitled to possession of books and records relating to the debtor's financial affairs.

The fifth ground for denial of discharge is the failure of the debtor to explain satisfactorily any loss of assets or deficiency of assets to meet the debtor's liabilities. The sixth ground concerns refusal to testify. It is a change from present law, under which the debtor may be denied discharge for legitimately exercising his right against self-incrimination. Under this provision, the debtor may be denied discharge if he refuses to obey any lawful order of the court, or if he refuses to testify after having been granted immunity or after improperly invoking the constitutional privilege against self-incrimination.

The seventh ground for denial of discharge is the commission of an act specified in grounds two through six during the year before the debtor's case in connection with another bankruptcy case concerning an insider.

The eighth ground for denial of discharge is derived from § 14c(5) of the Bankruptcy Act. If the debtor has been granted a discharge in a case commenced within 6 years preceding the present bankruptcy case, he is denied discharge. This provision, which is no change from current law with respect to straight bankruptcy, is the 6-year bar to discharge. Discharge under chapter 11 will bar a discharge for 6 years. As under current law, confirmation of a composition wage earner plan under chapter 13 is a basis for invoking the 6-year bar.

The ninth ground is approval by the court of a waiver of discharge.

Subsection (b) specifies that the discharge granted under this section discharges the debtor from all debts that arose before the date of the order for relief. It is irrelevant whether or not a proof of claim was filed with respect to the debt, and whether or not the claim based on the debt was allowed.

Subsection (c) permits the trustee, or a creditor, to object to discharge. It also permits the court, on request of a party in interest, to order the trustee to examine the acts and conduct of the debtor to determine whether a ground for denial of discharge exists.

Subsection (d) requires the court to revoke a discharge already granted in certain circumstances. If the debtor obtained the discharge through fraud, if he acquired and concealed property of the estate, or if he refused to obey a court order or to testify, the discharge is to be revoked.

Subsection (e) permits the trustee or a creditor to request revocation of a discharge within 1 year after the discharge is granted, on the grounds of fraud, and within one year of discharge or the date of the closing of the case, whichever is later, on other grounds.

Section 728. Special tax provisions

Section 728 of title 11 applies only to state and local taxation. This provision contains four subsections which embody special tax provisions that apply in a case under chapter 7. Subsection (a) terminates the taxable year of an individual debtor on the date of the order for relief under chapter 7 of title 11. The date of termination of the individual's taxable year is the date on which the estate first becomes a separate taxable entity. If the case was originally filed under

chapter 11 of title 11, then the estate would have been made a separate taxable entity on the date of the order for relief under that chapter. In the rare case of a multiple conversion, then the date of the order for relief under the first chapter under which the estate was a separate taxable entity is controlling.

Subsection (b) permits the trustee of the estate of an individual debtor or a corporation in a case under chapter 7 of title 11 to make a tax return only if the estate or corporation has net taxable income for the entire case. If the estate or corporation has net taxable income at the close of the case, then the trustee files an income tax return for each tax year during which the case was pending. The trustee of a partnership debtor must always file returns for each such taxable period.

Subsection (c) sets forth a marshalling rule pertaining to tax claims against a partner and a partnership in a case under chapter 7 of title 11. To the extent that the income tax liability arose from the inclusion of undistributed earnings in the partner's taxable income, the court is required to disallow the tax claim against the partner's estate and to allow such claim against the partnership estate. No burden is placed on the taxing authority; the taxing authority should file a complete proof of claim in each case and the court will execute the marshalling. If the partnership's assets are insufficient to satisfy partnership creditors in full, then section 723(c) of title 11 will apply, notwithstanding this subsection, to allow any unsatisfied tax claims to be asserted by the partnership trustee against the estate of the partner. The marshalling rule under this subsection applies only for purposes of allowance and distribution. Thus the tax claim may be nondischargeable with respect to an individual partner.

Subsection (d) requires the court to apportion any tax refund or reduction of tax between the estate of a partner and the estate of his partnership. The standard of apportionment entitles the partnership estate to receive that part of the tax refund or reduction that is attributable to losses sustained by the partnership that were deducted by the partner but for which the partner never reimbursed the partnership. The partner's estate receives any part not allocated to the partnership estate. The section applies notwithstanding section 541 of title 11, which includes the partner's right to a tax refund or to reduction of tax as property of the partner's estate.

SUBCHAPTER III—STOCKBROKER LIQUIDATION

Section 741. Definitions for this subchapter

Section 741 sets forth definitions for subchapter III of chapter 7.

Paragraph (1) defines "Commission" to mean the Securities and Exchange Commission.

Paragraph (2) defines "customer" to include anybody that interacts with the debtor in a capacity that concerns securities transactions. The term embraces cash or margin customers of a broker or dealer in the broadest sense.

Paragraph (3) defines "customer name security" in a restrictive fashion to include only non-transferrable securities that are registered, or in the process of being registered in a customer's own name. The

securities must not be endorsed by the customer and the stockbroker must not be able to legally transfer the securities by delivery, by a power of attorney, or otherwise.

Paragraph (4) defines "customer property" to include all property of the debtor that has been segregated for customers or property that should have been segregated but was unlawfully converted. Clause (i) refers to customer property not properly segregated by the debtor or customer property converted and then recovered so as to become property of the estate. Unlawfully converted property that has been transferred to a third party is excluded until it is recovered as property of the estate by virtue of the avoiding powers. The concept excludes customer name securities that have been delivered to or reclaimed by a customer and any property properly belonging to the stockholder, such as money deposited by a customer to pay for securities that the stockholder has distributed to such customer.

Paragraph (5) defines "net equity" to establish the extent to which a customer will be entitled to share in the single and separate fund. Accounts of a customer are aggregated and offset only to the extent the accounts are held by the customer in the same capacity. Thus, a personal account is separate from an account held as trustee. In a community property state an account held for the community is distinct from an account held as separate property.

The net equity is computed by liquidating all securities positions in the accounts and crediting the account with any amount due to the customer. Regardless of the actual dates, if any, of liquidation, the customer is only entitled to the liquidation value at the time of the filing of the petition. To avoid double counting, the liquidation value of customer name securities belonging to a customer is excluded from net equity. Thus, clause (ii) includes claims against a customer resulting from the liquidation of a security under clause (i). The value of a security on which trading has been suspended at the time of the filing of the petition will be estimated. Once the net liquidation value is computed, any amount that the customer owes to the stockbroker is subtracted including any amount that would be owing after the hypothetical liquidation, such as brokerage fees. Debts owed by the customer to the debtor, other than in a securities related transaction, will not reduce the net equity of the customer. Finally, net equity is increased by any payment by the customer to the debtor actually paid within 60 days after notice. The principal reason a customer would make such a payment is to reclaim customer name securities under §751.

Paragraph (6) defines "1934 Act" to mean the Securities Exchange Act of 1934.

Paragraph (7) defines "SIPC" to mean the Securities Investor Protection Corporation.

Section 742. Effect of section 362 of this subchapter

Section 742 indicates that the automatic stay does not prevent SIPC from filing an application for a protective decree under SIPA. If SIPA does file such an application, then all bankruptcy proceedings are suspended until the SIPC action is completed. If SIPC completes liquidation of the stockbroker then the bankruptcy case is dismissed.

Section 743. Notice

Section 743 requires that notice of the order for relief be given to SIPC and to the SEC in every stockbroker case.

Section 744. Executory contracts

Section 744 instructs the court to give the trustee a reasonable time, not to exceed 30 days, to assume or reject any executory contract of the stockbroker to buy or sell securities. Any contract not assumed within the time fixed by the court is considered to be rejected.

Section 745. Treatment of accounts

Section 745(a) indicates that each account held by a customer in a separate capacity is to be considered a separate account. This prevents the offset of accounts held in different capacities.

Subsection (b) indicates that a bank or another stockbroker that is a customer of a debtor is considered to hold its customers accounts in separate capacities. Thus a bank or other stockbroker is not treated as a mutual fund for purposes of bulk investment. This protects unrelated customers of a bank or other stockholder from having their accounts offset.

Subsection (c) effects the same result with respect to a trust so that each beneficiary is treated as the customer of the debtor rather than the trust itself. This eliminates any doubt whether a trustee holds a personal account in a separate capacity from his trustee's account.

Section 746. Extent of customer claim

Section 746(a) protects entities who deal in good faith with the debtor after the filing of the petition and before a trustee is appointed by deeming such entities to be customers. The principal application of this section will be in an involuntary case before the order for relief, because § 701(b) requires prompt appointment of an interim trustee after the order for relief.

Subsection (b) indicates that an entity who holds securities that are either part of the capital of the debtor or that are subordinated to the claims of any creditor of the debtor is not a customer with respect to those securities. This subsection will apply when the stockbroker has sold securities in itself to the customer or when the customer has otherwise placed such securities in an account with the stockbroker.

Section 747. Subordination of certain customer claims

Section 747 subordinates to other customer claims, all claims of a customer who is an insider, a five percent owner of the debtor, or otherwise in control of the debtor.

Section 748. Reduction of securities to money

Section 748 requires the trustee to liquidate all securities, except for customer name securities, of the estate in a manner consistent with good market practice. The trustee should refrain from flooding a thin market with a large percentage of shares in any one issue. If the trustee holds restricted securities or securities in which trading has been suspended, then the trustee must arrange to liquidate such securities in accordance with the securities laws. A private placement may be the only exemption available with the customer of the debtor the best

prospect for such a placement. The subsection does not permit such a customer to bid in his net equity as part of the purchase price; a contrary result would permit a customer to receive a greater percentage on his net equity claim than other customers.

Section 749. Voidable transfers

Section 749 indicates that if the trustee avoids a transfer, property recovered is customer property to any extent it would have been customer property but for the transfer. The section clarifies that a customer who receives a transfer of property of the debtor is a creditor and that property in a customer's account is property of a creditor for purposes of the avoiding powers.

Section 750. Distribution of securities

Section 750 forbids the trustee from distributing a security other than a customer name security. The term "distribution" refers to a distribution to customers in satisfaction of net equity claims and is not intended to preclude the trustee from liquidating securities under proposed 11 U.S.C. 748.

Section 751. Customer name securities

Section 751 requires the trustee to deliver a customer name security to the customer entitled to such security unless the customer has a negative net equity. The customer's net equity will be negative when the amount owed by the customer to the stockboker exceeds the liquidation value of the non-customer name securities in the customer's account. If the customer is a net debtor of the stockbroker, then the trustee may permit the customer to repay debts to the stockbroker so that the customer will not longer be in debt to the stockbroker. If the customer refuses to pay such amount, then the court may order the customer to endorse the security in order that the trustee may liquidate such property.

Section 752. Customer property

Section 752(a) requires the trustee to distribute customer property to customers based on the amount of their net equity claims. Customer property is to be distributed in priority to all claims except expenses of administration entitled to priority under § 507(1). It is anticipated that the court will apportion such administrative claims on an equitable basis between the general estate and the customer property of the debtor.

Subsection (b)(1) indicates that in the event customer property exceeds customers net equity claims and administrative expenses, the excess pours over into the general estate. This event would occur if the value of securities increased dramatically after the order for relief but before liquidation by the trustee. Subsection (b)(2) indicates that the unpaid portion of a customer's net equity claim is entitled to share in the general estate as an unsecured claim unless suborbinated by the court under proposed 11 U.S.C. 501. A net equity claim of a customer that is subordinated under section 747 is entitled to share in distribution under section 726(a)(2) unless subordinated under section 510 independently of the subordination under section 747.

Subsection (c) provides for apportionment between customer property and the general estate of any equity of the debtor in property remaining after a secured creditor liquidates a security interest. This might occur if a stockbroker hypothecates securities of his own and of his customers if the value of the hypothecated securities exceeds the debt owed to the secured party. The apportionment is to be made according to the ratio of customer property and general property of the debtor that comprised the collateral. The subsection refers to cash and securities of customers to include any customer property unlawfully converted by the stockbroker in the course of such a transaction. The apportionment is made subject to section 741(4)(B) to insure that property in a customer's account that is owed to the stockbroker will not be considered customer property. This recognizes the right of the stockbroker to withdraw money that has been erroneously placed in a customer's account or that is otherwise owning to the stockbroker.

Section 761. Definitions for this subchapter

Paragraph (1) defines "Act" to mean the Commodity Exchange Act.

Paragraph (2) defines "clearing organization" to mean an organization that clear (*i.e.*, matches purchases and sales) commodity futures contracts made on or subject to the rules of a contract market or commodity options transactions made on or subject to the rules of a commodity option exchange. Although commodity option trading on exchanges is currently prohibited, it is anticipated that CFTC may permit such trading in the future.

Paragraphs (3) and (4) define terms "Commission" and "commodity futures contract".

Paragraph (5) defines "commodity contract" to mean a commodity futures contract (§ 761(4)), a commodity option (§ 761(6)), or a leverage contract (§ 761(15)).

Paragraph (b) defines "commodity option" by reference to section 4c(b) of the Commodity Exchange Act.

Paragraphs (7), (8), and (9) define "commodity options dealer," "contract market," "contract of sale," "commodity," "future delivery," "board of trade," and "futures commission merchant."

Paragraph (10) defines the term "customer" to mean with respect to a futures commission merchant or a foreign futures commission merchant, the entity for whom the debtor carries a commodity futures contract or foreign future, or with whom such a contract is carried (such as another commodity broker), or from whom the debtor has received, acquired, or holds cash, securities, or other property arising out of or connected with specified transactions involving commodity futures contracts or foreign futures. This section also defines "customer" in the context of leverage transaction merchants, clearing organizations, and commodity options dealers. Persons associated with a commodity broker, such as its employees, officers, or partners, may be customers under this definition.

The definition of "customer" serves to isolate that class of persons entitled to the protection subchapter IV provides to customers. In addition, section 101(5) defines "commodity broker" to mean a futures commission merchant, foreign futures commission merchant, clearing organization, leverage transaction merchant, or commodity options dealer, with respect to which there is a customer. Accordingly, the

definition of customer also serves to designate those entities which must utilize chapter 7 and are precluded from reorganizing under chapter 11.

Paragraph (11) defines "customer property" to mean virtually all property or proceeds thereof, received, acquired, or held by or for the account of the debtor for a customer arising of or in connection with a transaction involving a commodity contract.

Paragrap (12) defines "distribution share" to mean the amount to which a customer is entitled under section 765(a).

Paragraphs (13), (14), (15), and (16) define "foreign future," "foreign futures commission merchant," "leverage transaction," and "leverage transaction merchant."

Paragraph (17) defines "margin payment" to mean a payment or deposit commonly known to the commodities trade as original margin, initial margin, or variation margin.[21]

Paragraph (18) defines "member property."

Paragraph (19) defines "net equity" to be the sum of (A) the value of all customer property remaining in a customer's account [22] immediately after all commodity contracts of such customer have been transferred, liquidated, or become identified for delivery and all obligations of such customer to the debtor have been offset (such as margin payments, whether or not called, and brokerage commissions) plus (B) the value of specifically identifiable customer property previously returned to the customer by the trustee, plus (C) if the trustee has transferred any commodity contract to which the customer is entitled or any margin or security for such contract, the value of such contract and margain or security. Net equity, therefore, will be the total amount of customer property to which a customer is entitled as of the date of the filing of the bankruptcy petition, although valued at subsequent dates. The Commission is given authority to promulgate rules and regulations to further refine this definition.

Section 762. Notice to and intervention by the Commission

Section 762 provides that the Commission shall be given such notice as is appropriate of an order for relief in a bankruptcy case and that the Commission may raise and may appear and may be heard on any issue in case involving a commodity broker liquidation.

Section 763. Treatment of accounts

Section 763 provides for separate treatment of accounts held in separate capacities. A deficit in one account held for a customer may not be offset against the net equity in another account held by the same customer in a separate capacity or held by another customer.

Section 764. Voidable transfers

Section 764 permits the trustee to void any transfer of property that, except for such transfer, would have been customer property, to the extent permitted under section 544, 545, 547, 548, 549, or 724(a).

Section 765. Customer property

Subsection (a) of this section provides that with respect to liquidation of commodity brokers which are not clearing organizations, the trustee shall distribute customer property to customers on the basis

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[21] *See* S. Rep. No. 95-850, 95th Cong., 2d Sess. 130, 138 (1978).

[22] The amount remaining in such customers accounts would include any customer property that was unlawfully converted. *See* section 761(11)(A).

and to the extent of such customers' allowed net equity claims, and in priority to all other claims. This section grants customers' claims first priority in the distribution of the estate. Subsection (b) grants the same priority to member property and other customer property in the liquidation of a clearing organization. A fundamental purpose of these provisions is to ensure that the property entrusted by customers to their brokers will not be subject to the risks of the broker's business and will be available for disbursement to customers if the broker becomes bankrupt.

As a result of section 765, a customer need not trace any funds in order to avoid treatment as a general creditor as was required by the Seventh Circuit in *In re Rosenbaum Grain Corporation.*[23]

Section 766. Nonvoidable transfers

Section 766 lists certain transfers which are not voidable by the trustee of a commodity broker. Subsection (a) exempts transfers approved by the Commission by rule or order, either before or after the transfer. It is expected that the Commission will use this power sparingly and only when necessary to effectuate the remedial purposes of this legislation, bearing in mind that the immediate transfer of customer accounts from bankrupt commodity brokers to solvent commodity brokers is one of the primary goals of this subchapter. The committee considered and rejected a provision in subsection (b) that would have exempted payments made to a commodity broker. The Commission may not by rule exempt such transfers. The Commission's prompt attention to the promulgation of such rules and regulations is expected.

Subsection (b) provides for the nonavoidability of margin payments made by a commodity broker, other than a clearing organization. If such payments are made by or to a clearing organization, they are nonavoidable pursuant to subsection (c). All other margin payments made by a commodity broker, other than a clearing organization, are nonavoidable if they meet the conditions set forth in subsection (b). Subsections (b)(1) and (b)(2) parallel the requirements for avoidance of fraudulent transfers and obligations under section 548. Subsection (b)(3) adds a requirement that there be collusion between the transferee and transferor in order for such payments to be voidable. It would be unfair to permit recovery from an innocent commodity broker since such brokers are, for the most part, simply conduits for margin payments and do not retain margin for use in their operations. Subsection (b)(4) would permit recovery of a subsequent transferee only if it had actual knowledge at the time of that subsequent transfer of the scheme to defraud. Again it should be noted that if the transfer is a margin payment and the subsequent transferee is a clearing organization, the transfer is nonavoidable under section 766(c).

Subsection (c) overrules *Seligson* v. *New York Produce Exchange*,[24] and provides as a matter of law that margin payments made by or to a clearing organization are not voidable.

Section 767. Specific powers and duties of trustee

Section 767 sets forth the procedures to be followed by the trustee. It should be emphasized that many of the duties imposed on the trustee are required to be discharged by the trustee immediately upon his appointment. The earlier these duties are discharged the less potential market disruption can result.

[23] 112 F.2d 315 (7th Cir. 1940).
[24] 394 F. Supp. 125 (S.D.N.Y. 1975).

The initial duty of the trustee is to endeavor to transfer to another commodity broker or brokers all identified customer accounts together with the customer property margining such accounts, to the extent the trustee deems appropriate. Although it is preferable for all such accounts to be transferred, exigencies may dictate a partial transfer. The requirement that the value of the accounts and property transferred not exceed the customer's distribution share may necessitate a slight delay until the trustee can submit to the court, for its disapproval, an estimate of each customer's distribution share pursuant to section 768.

Subsection (c) provides that contemporaneously with the estimate of the distribution share and the transfer of identified customer accounts and property, subsection (c) provides that the trustee should make arrangements for the liquidation of all commodity contracts maintained by the debtor that are not identifiable to specific customers. These contracts would, of course, include all such contracts held in the debtor's proprietory account.

At approximately the same time, the trustee should notify each customer of the debtor's bankruptcy and instruct each customer immediately to submit a claim including any claim to a specifically identifiable security or other property, and advise the trustee as to the desired disposition of commodity contracts carried by the debtor for the customer.

This requirement is placed upon the trustee to insure that producers who have hedged their production in the commodities market are allowed the opportunity to preserve their positions. The theory of the commodity market is that it exists for producers and buyers of commodities and not for the benefit of the speculators whose transactions now comprise the overwhelming majority of trades. Maintenance of positions by hedges may require them to put up additional margin payments in the hours and days following the commodity broker bankruptcy, which they may be unable or unwilling to do. In such cases, their positions will be quickly liquidated by the trustee, but they must have the opportunity to make those margin payments before they are summarily liquidated out of the market to the detriment of their growing crop. The failure of the customer to advise the trustee as to disposition of the customer's commodity contract will not delay a transfer of a contract pursuant to subsection (b) so long as the contract can otherwise be identified to the customer. Nor will the failure of the customer to submit a claim prevent the customer from recovering the net equity in that customer's account, absent a claim the customer cannot participate in the determination of the net equity in the account.

If the customer submits instructions pursuant to subsection (a) after the customer's commodity contracts are transferred to another commodity broker, the trustee must transmit the instruction to the transferee. If the customer's commodity contracts are not transferred before he customer's instructions are received, the trustee must attempt to comply with the instruction, subject to the provisions of section 767(d).

Under subsection (d), the trustee has discretion to liquidate any commodity contract carried by the debtor at any time. This discretion must be exercised with restraint in such cases, consistent with the purposes of this subchapter and good business practices. The com-

mittee intends that hedged accounts will be given special consideration before liquidation as discussed in connection with subsection (c).

Subsection (e) instructs the trustee as to the disposition of any security or other property, not disposed of pursuant to subsection (b) or (d), that is specifically identifiable to a customer and to which the customer is entitled. Such security or other property must be returned to the customer or promptly transferred to another commodity broker for the benefit of the customer. If the value of the security or other property retained or transferred, together with any other distribution made by the trustee to or on behalf of the customer, exceeds the customer's distribution share the customer must deposit cash with the trustee equal to that difference before the return or transfer of the security or other property.

Subsection (f) requires the trustee to answer margin calls on specifically identifiable customer commodity contracts, but only to the extent that the margin payment, together with any other distribution made by the trustee to or on behalf of the customer, does not exceed the customer's distribution share.

Subsection (g) requires the trustee to liquidate all commodity futures contracts prior to the close of trading in that contract, or the first day on which notice of intent to deliver on that contract may be tendered, whichever occurs first. If the customer desires that the contract be kept open for delivery, the contract should be transferred to another commodity broker pursuant to subsection (b).

If for some reason the trustee is unable to transfer a contract on which delivery must be made or accepted and is unable to close out such contract, the trustee is authorized to operate the business of the debtor for the purpose of accepting or making tender of notice of intent to deliver the physical commodity underlying the contract, facilitating delivery of the physical commodity, or disposing of the physical commodity in the event of a default. Any property received, not previously held, by the trustee in connection with its operation of the business of the debtor for these purposes, is not by the terms of this subchapter specifically included in the definition of customer property.

Finally, subsection (h) requires the trustee to liquidate the debtor's estate as soon as practicable and consistent with good market practice, except for specifically identifiable securities or other property distributable under subsection (e).

Section 768. Estimate of distribution share

Section 768 is an integral part of the commodity broker liquidation procedures outlined in section 767. Prompt action by the trustee to transfer or liquidate customer commodity contracts is necessary to protect customers, the debtor's estate, and the marketplace generally. However, transfers of customer accounts and property valued in excess of the customer's distribution share are prohibited. Since a determination of the customer's distribution share requires a determination of the customer's net equity and the total dollar value of customer property held by or for the account of the debtor, it is possible that the customer's distribution share will not be determined, and thus the customer's contracts and property will not be transferred, on a

timely basis. To avoid this problem, and to expedite transfers of customer property, section 768 permits the trustee to make distributions to customers in accordance with a preliminary estimate of the debtor's customer property and each customer's distribution share.

It is acknowledged that the necessity for prompt action may not allow the trustee to assemble all relevant facts before such an estimate is made. However, the trustee is expected to develop as accurate an estimate as possible based on the available facts. Further, in order to permit expeditious action, section 768 does not require that notice be given to customers or other creditors before the court approves or disapproves the estimate. Nor does section 768 require that customer claims be received pursuant to section 767(a) before the trustee may act upon and in accordance with the estimate. If the estimate is inaccurate, the trustee is absolved of liability for a distribution which exceeds the customer's actual distribution share so long as the distribution did not exceed the customer's estimated distribution share. However, a trustee may have a claim back against a customer who received more than its actual distribution share.

Section 769. Proceeds from sale of membership

Section 769 codifies the holding in *Board of Trade* v. *Johnson*,[25] by validating the bylaws, rules, or regulations of a contract market or clearing organization regarding the application of the proceeds derived from the sale of the debtor's membership in the contract market or clearing organization.

Section 770. Contractual rights to liquidate or transfer

This section is designed to preclude any court from issuing any order preventing, staying, or otherwise prohibiting the exercise by a commodity broker of a contractual right to liquidate or transfer a commodity contract. The committee is particularly concerned that clearing organizations not be restricted in their power to close out undermargined accounts.

Section 902. Definitions

There are six definitions for use in chapter 9. Paragraph (1) defines what claims are included in a chapter 9 case and adopts the definition now found in section 81(1). All claims against the petitioner generally will be included, with one significant exception. Municipalities are authorized, under section 103(c) of the Internal Revenue Code of 1954, as amended, to issue tax-exempt industrial development revenue bonds to provide for the financing of certain projects for privately owned companies. The bonds are sold on the basis of the credit of the company on whose behalf they are issued, and the principal, interest, and premium, if any, are payable solely from payments made by the company to the trustee under the bond indenture and do not constitute claims on the tax revenues or other funds of the issuing municipalities. The municipality merely acts as the vehicle to enable the bonds to be issued on a tax-exempt basis. Claims that arise by virtue of these bonds are not among the claims defined by this paragraph and amounts owed by private companies to the holders of industrial development revenue bonds are not to be included among the assets of the municipality

[25] 264 U.S. 1 (1924).

that would be affected by the plan. See Cong. Record, 94th Cong., 1st Sess. H.R. 12073 (statement by Mr. Don Edwards, floor manager of the bill in the House). Paragraph (2) defines the court which means the federal district court or federal district judge before which the case is pending. Paragraph (3) specifies that when the term "property of the estate" is used in a section in another chapter made applicable in chapter 9 cases, the term means "property of the debtor". Paragraphs (4) and (5) adopt the definition of "special taxpayer affected by the plan" that appears in current sections 81(10) and 81(11) of the Bankruptcy Act. Paragraph (6) provides that "trustee" means "debtor" when used in conjunction with chapter 9.

Section 903. Reservation of State power to control municipalities

Section 903 is derived, with stylistic changes, from section 83 of current Chapter IX. It sets forth the primary authority of a State, through its constitution, laws, and other powers, over its municipalities. The proviso in section 83, prohibiting State composition procedures for municipalities, is retained. Deletion of the provision would "permit all States to enact their own versions of Chapter IX", *Municipal Insolvency*, 50 Am. Bankr. L.J. 55, 65, which would frustrate the constitutional mandate of uniform bankruptcy laws. *Constitution of the United States.* Art. I, Sec. 8.

This section provides that the municipality can consent to the court's orders in regard to use of its income or property. It is contemplated that such consent will be required by the court for the issuance of certificates of indebtedness under section 364(c) Such consent could extend to enforcement of the conditions attached to the certificates or the municipal services to be provided during the proceedings.

Section 904. Limitations of jurisdiction and powers of court

This section adopts the policy of section 82(c) of current law. The only change in this section from section 82(c) is to conform the section to the style and cross-references of S. 2266.

Section 905. Designation of judge

Section 905 adopts the procedures for selection of the judge for the chapter 9 case as found in current section 82(d). It is expected that the large chapter 9 case might take up almost all the judicial time of the presiding judge and involve very complex legal questions. Selection should not be left to chance or the luck of the draw. This provision will insure that calendar demands and levels of experience can be considered in the selection of the judge in a Chapter 9 case.

Section 906. Eligibility for relief

Section 906 adopts the current law of section 84 of the Bankruptcy Act. It requires general authorization by the State legislature, or by a governmental officer (which includes the chief executive) or governmental organization (such as a municipal finance commission), empowered by State law to authorize filing.

Absent such a requirement for affirmative action by the state, a serious constitutional question would be raised in connection with the 10th amendment. See *New Power of the Chapter IX Bankruptcy Court to Authorize the Issuance of Certificates of Indebtedness: Con-*

gressional Relief or Congressional Overreaching, 51 Am. Bankr. L.J.1. ( ).

An additional eligibility requirement is contained in this section. It requires that the petitioner meet one of four conditions before it may seek relief under the chapter. The purpose of the provision is to limit accessibility to the bankruptcy court somewhat, as does current law, without making the accessibility requirement so stringent as to preclude relief in a situation in which the petitioner is confronted with stubborn or aggressive creditors or creditors whose identities are unknown because of the existence of a large number of bonds in bearer form.

Section 924. List of creditors

This section adopts the provision presently contained in section 85 (b) of Chapter IX. A list of creditors, as complete and accurate as practicable, must be filed with the court.

Section 925. Venue and fees

This section adopts current section 85(c). If a debtor is located in more than one judicial district, it may select as its filing place either of the districts in which it is located.

Section 926. Effect of list of claims

Section 926 follows the policy contained in section 88(a) of the present Act, though certain details are left to the Rules. The language of section 926 is the same as that of proposed 11 U.S.C. 1111, which applies in chapter 11 cases. The list of creditors filed under section 924 is given weight as prima facie evidence of the claims listed (except claims that are listed as disputed, contingent, or unliquidated), which are deemed filed under section 501, obviating the need for listed creditors to file proofs of claim.

Section 927. Dismissal

Section 927 conforms to section 98 of current law. The Section permits dismissal by the court for unreasonable delay by the debtor, failure to propose a plan, failure of acceptance of a plan, or default by the debtor under a conformed plan. Mandatory dismissal is required if confirmation is refused.

Section 928. Avoiding powers

This section adopts current section 85(h) which provides for a trustee to be appointed for the purpose of pursuing an action under an avoiding power, if the debtor refuses to do so. This section is necessary because a municipality might, by reason of political pressure or desire for future good relations with a particular creditor or class of creditors, make payments to such creditors in the days preceding the petition to the detriment of all other creditors. No change in the elected officials of such a city would automatically occur upon filing of the petition, and it might be very awkward for those same officials to turn around and demand the return of the payments following the filing of the petition. Hence, the need for a trustee for such purpose.

The general avoiding powers are incorporated by reference in section 901 and are broader than under current law. Preferences, fraudulent conveyances, and other kinds of transfers will thus be voidable.

Incorporated by reference also is the power to accept or reject executory contracts and leases (section 365). Within the definition of executory contracts are collective bargaining agreements between the city and its employees. Such contracts may be rejected despite contrary State laws. Courts should readily allow the rejection of such contracts where they are burdensome, the rejection will aid in the municipality's reorganization and in consideration of the equities of each case. On the last point, "[e]quities in favor of the city in chapter 9 will be far more compelling than the equities in favor of the employer in chapter 11. Onerous employment obligations may prevent a city from balancing its budget for some time. The prospect of an unbalanced budget may preclude judicial confirmation of the plan. Unless a city can reject its labor contracts, lack of funds may force cutbacks in police, fire, sanitation, and welfare services, imposing hardships on many citizens. In addition, because cities in the past have often seemed immune to the constraint of "profitability" faced by private businesses, their wage contracts may be relatively more onerous than those in the private sector." *Executory Contracts and Municipal Bankruptcy*, 85 Yale L.J. 957, 965 (1976) (footnote omitted). Rejection of the contracts may require the municipalities to renegotiate such contracts by state collective bargaining laws. It is intended that the power to reject collective bargaining agreements will pre-empt state termination provisions, but not state collective bargaining laws. Thus, a city would not be required to maintain existing employment terms during the renegotiation period.

Section 929. Reference

Section 929 adopts current law as found in section 87(a) and allows reference to be made by the Federal district judge handling the case to a bankruptcy judge for consideration of a special issue of fact. Such reference shall be the exception and not the rule.

Section 930. Priorities

Section 930 adopts section 89 of current law. The priorities are those traditional to municipal arrangements. The second priority is necessary to insure that the suppliers of the municipality will continue to provide needed supplies prior to the filing of a petition under chapter 9. Without such a priority, because of the notoriety that will probably accompany the pre-petition negotiations and the decision to file, suppliers would cut off deliveries on credit, and the city would be unduly rushed to the courthouse door.

Section 941. Filing of plan

Section 941 gives the debtor the exclusive right to propose a plan, and directs that the debtor propose one either with the petition or within such time as the court directs. The section follows section 90(a) of current law.

Section 942. Transmission of Plan

Section 942 adopts current section 90(b) and provides that the plan, or a summary thereof, will be transmitted by the petitioner or such other person as the court directs, to each creditor whose claim is affected by the plan, to each special taxpayer affected by the plan and to any party in interest that the court designates.

Section 943. Modification of plan

Section 942 permits the debtor to modify the plan at any time before confirmation, as does section 90(a) of current law.

Section 944. Provisions of plan

Section 944 adopts current section 91, which provides that a plan may modify or alter the rights of all creditors, including those secured or unsecured. The concept of a "secured" creditor has a different meaning in chapter 9 since in most jurisdictions, municipalities are prohibited from giving traditional types of secured interests such as real estate mortgages, because of the public nature of property of the municipality. Secured creditors will be more likely secured because of the pledge of a particular stream of the city revenues. These persons are so-called revenue bondholders in contrast to general obligation bondholders, who will be treated as unsecured creditors.

Section 945. Acceptance

Section 945 is adopted from current section 92. Generally, at least two-thirds by amounts and one-half by number of the creditors voting on the plan and affected by the plan must accept for confirmation.

Section 946. Confirmation

Section 946 is adopted from current section 94. The test for confirmation is whether or not the plan is fair and equitable and feasible. The fair and equitable test tracts current chapter X and is known as the strict priority rule. Creditors must be provided, under the plan, the going concern value of their claims. The going concern value contemplates a "comparison of revenues and expenditures taking into account the taxing power and the extent to which tax increases are both necessary and feasible" *Municipal Insolvency, supra*, at p. 64, and is intended to provide more of a return to creditors than the liquidation value if the city's assets could be liquidated like those of a private corporation.

Section 947. Effect of confirmation

Subsection (a) makes the provisions of a confirmed plan binding on the debtor and creditors. It is derived from section 95(a) of chapter 9.

Subsections (b) and (c) provide for the discharge of a municipality. The discharge is essentially the same as that granted under section 95(b) of the Bankruptcy Act.

Section 948. Continuing jurisdiction

Section 948 permits the court to retain jurisdiction over the case to ensure successful execution of the plan. The provision is the same as that found in section 96(e) of Chapter 9 of the present Act.

Section 949. Effect of exchange of securities before the date of filing of the petition

This section, which follows section 97 of current law, permits an exchange of a security before the case is filed to constitute an acceptance of the plan if the exchange was under a proposal that later becomes the plan.

Section 950. Unconstitutionality, revival

This section ensures the existence of a municipal debt adjustment chapter of Chapter 9 is found unconstitutional.

SUBCHAPTER 1—OFFICERS AND ADMINISTRATION

Section 1101. Definitions

This section contains definitions of three terms that are used in chapter 11. Paragraph (1) defines debtor in possession to mean the debtor, except when a trustee who has qualified is serving in the case.

Paragraph (2), derived from section 229a of current law, defines substantial consummation. Substantial consummation of a plan occurs when transfer of all or substantially all of the property proposed by the plan to be transferred is actually transferred; when the debtor (or its successor) has assumed the business of the debtor or the management of all or substantially all of the property dealt with by the plan; and when distribution under the plan has commenced.

Paragraph (3) defines for purposes of Chapter 11 a public company to mean "a debtor who, within 12 months prior to the filing of a petition for relief under this chapter, had outstanding liabilities of $5 million or more, exclusive of liabilities for goods, services, or taxes and not less than 1,000 security holders." There are, as noted, special safeguards for public investors related to the reorganization of a public company, as so defined.

Both requirements must be met: liabilities, excluding tax obligations and trade liabilities. must be $5 million or more; and (2) the number of holders of securities, debt or equity, or both, must be not less than 1,000. The amount and number are to be determined as of any time within 12 months prior to the filing of the petition for reorganization.

Section 1102. Creditors' and equity security holders' committees

This section provides for the election and appointment of committees. Subsection (c) provides that this section does not apply in case of a public company, as to which a trustee, appointed under section 1104(a) will have responsibility to administer the estate and to formulate a plan as provided in section 1106(a).

There is no need for the election or appointment of committees for which the appointment of a trustee is mandatory. In the case of a public company there are likely to be several committees, each representing a different class of security holders and seeking authority to retain accountants, lawyers, and other experts, who will expect to be paid. If in the case of a public company creditors or stockholders wish to organize committees, they may do so, as authorized under section 1109(a). Compensation and reimbursement will be allowed for contributions to the reorganization pursuant to section 503(b) (3) and (4).

Section 1103. Powers and duties of committees

This section defines the powers and duties of a committee elected or appointed under section 1102.

Under subsection (a) the committee may, if authorized by the court, employ one or more attorneys, accountants, or other agents to represent or perform services for the committee. Normally one attorney should suffice; more than one may be authorized for good cause. The same considerations apply to the services of others, if the need for any at all is demonstrated.

Under subsections (c) and (d) the committee, like any party in interest, may confer with the trustee or debtor regarding the administration of the estate; may advise the court on the need for a trustee under section 1104(b). The committee may investigate matters specified in paragraph (2) of subsection (c), but only if authorized by the court and if no trustee or examiner is appointed.

Section 1104. Appointment of trustee or examiner

Subsection (a) provides for the mandatory appointment of a disinterested trustee in the case of a public company, as defined in section 1101(3), within 10 days of the order for relief, or of a successor, in the event of a vacancy, as soon as practicable.

Section 156 of chapter X (11 U.S.C. 516) requires the appointment of a disinterested trustee if the debtor's liabilities are $250,000 or over. Section 1104(a) marks a substantial change. The appointment of a trustee is mandatory only for a public company, which under section 1101(3), has $5 million in liabilities, excluding tax and trade obligations, and 1,000 security holders. In view of past experience, cases involving public companies will under normal circumstances probably be relatively few in number but of vast importance in terms of public investor interest.

In case of a nonpublic company, the appointment or election of a trustee is discretionary if the interests of the estate and its security holders would be served thereby. A test based on probable costs and benefits of a trusteeship is not practical. The appointment may be made at any time prior to confirmation of the plan.

In case of a nonpublic company, if no trustee is appointed, the court may under subsection (c) appoint an examiner, if the appointment would serve the interests of the estate and security holders. The purpose of his appointment is specified in section 1106(b).

Section 1105. Termination of trustee's appointment

This section authorizes the court to terminate the trustee's appointment and to restore the debtor to possession and management of the property of the estate and to operation of the debtor's business. Section 1104(a) provides that this section does not apply in the case of a public company, for which the appointment of a trustee is mandatory.

Section 1106. Duties of trustee and examiner

Subsection (a) of this section prescribes the trustee's duties. He is required to perform the duties of a trustee in a liquidation case specified in section 704(2), (4), (6), (7), (8), and (9). These include reporting and informational duties, and accountability for all property received. Paragraph (2) of this subsection requires the trustee to file with the court, if the debtor has not done so, the list of creditors, schedule of assets and liabilities, and statement of affairs required under section 521(1).

Paragraph (3) of S. 1106 requires the trustee to investigate the acts, conduct, assets, liabilities, and financial condition of the debtor, the operation of the debtor's business, and the desirability of the continuance of the business, and any other matter relevant to the case or to the formulation of a plan. Paragraph (4) requires the trustee to report

the results of his investigation to the court and to creditors' committees, equity security holders' committees, indenture trustees and any other entity the court designates.

Paragraph (5) requires the trustee to file a plan or to report why a plan cannot be formulated, or to recommend conversion to liquidation or to an individual repayment plan case, or dismissal. It is anticipated that the trustee will consult with creditors and other parties in interest in the formulation of a plan, just as the debtor in possession would.

Paragraph (6) requires final reports by the trustee, as the court orders.

Subsection (b) gives the trustee's investigative duties to an examiner, if one is appointed. The court is authorized to give the examiner additional duties as the circumstances warrant.

Paragraphs (3), (4), and (5) of subsection (a) are derived from sections 165 and 169 of chapter X (11 U.S.C. 565, 569).

Section 1107. Rights, powers, and duties of debtor in possession

This section places a debtor in possession in the shoes of a trustee in every way. The debtor is given the rights and powers of a chapter 11 trustee. He is required to perform the functions and duties of a chapter 11 trustee (except the investigative duties). He is also subject to any limitations on a chapter 11 trustee, and to such other limitations and conditions as the court prescribes cf. *Wolf* v. *Weinstein*, 372 U.S. 633, 649–650 (1963).

Section 1108. Authorization to operate business

This section permits the debtor's business to continue to be operated, unless the court orders otherwise. Thus, in a reorganization case, operation of the business will be the rule, and it will not be necessary to go to the court to obtain an order authorizing operation.

Section 1109. Right to be heard

Subsection (a) provides, in unqualified terms, that any creditor, equity security holder, or an indenture trustee shall have the right to be heard as a party in interest under this chapter in person, by an attorney, or by a committee. It is derived from section 206 of chapter X (11 U.S.C. 606).

Subsection (b) provides that the Securities and Exchange Commission may appear by filing an appearance in a case of a public company and may appear in other cases if authorized or requested by the court. As a party in interest in either case, the Commission may raise and be heard on any issue. The Commission may not appeal from a judgment, order, or decree in a case, but may participate in any appeal by any other party in interest. This is the present law under section 208 of chapter X (11 U.S.C. 608).

Section 1110. Aircraft equipment and vessels

This section, to a large degree, preserves the protection given lessors and conditional vendors of aircraft to a certificated air carrier or of vessels to a certificated water carrier under section 116(5) and 116(6) of present Chapter X. It is modified to conform with the consolidation of Chapters X and XI and with the new chapter 11 generally. It is also modified to give the trustee in a reorganization case an oppor-

tunity to continue in possession of the equipment in question by curing defaults and by making the required lease or purchase payments. This removes the absolute veto power over a reorganization that lessors and conditional vendors have under present law, while entitling them to protection of their investment.

The section overrides the automatic stay or any power of the court to enjoin taking of possession of certain leased, conditionally sold, or liened equipment, unless, the trustee agrees to perform the debtor's obligations and cures all prior defaults (other than defaults under ipso facto or bankruptcy clauses) within 60 days after the order for relief. The trustee and the equipment financer are permitted to extend the 60-day period by agreement. During the first 60 days, the automatic stay will apply to prevent foreclosure unless the creditor gets relief from the stay.

The effect of this section will be the same if the debtor has granted the security interest to the financer or if the debtor is leasing equipment from a financer that has leveraged the lease and leased the equipment subject to a security interest of a third party.

Section 1111. Effect of schedule of claims and interests

This section dispenses with the need for every creditor and equity security holder to file a proof of claim or interest in a reorganization case, Usually the debtor's schedules are accurate enough that they will suffice to determine the claims or interests allowable in the case. Thus, the section specifies that any claim or interest included on the debtor's schedules is deemed filed under section 501. This does not apply to claims or interests that are scheduled as disputed, contingent, or unliquidated.

Section 1112. Conversion or dismissal

This section brings together all of the conversion and dismissal rules for chapter 11 cases. Subsection (a) gives the debtor an absolute right to convert a voluntarily commenced chapter 11 case in which the debtor remains in possession to a liquidation case.

Subsection (b) gives wide discretion to the court to make an appropriate disposition of the case *sua sponte* or upon motion of a party in interest, or the court is permitted to convert a reorganization case to a liquidation case or to dismiss the case, whichever is in the best interest of creditors and the estate, but only for cause. Cause may include the continuing loss to or dimunition of the estate of an insolvent debtor, the absence of a reasonable likelihood of rehabilitation, the inability to effectuate a plan, unreasonable delay by the debtor that is prejudicial to creditors, failure to file a plan within the appropriate time limits, denial of confirmation and any opportunity to modify or propose a new plan, revocation of confirmation and denial of confirmation of a modified plan, inability to effectuate substantial consummation of a confirmed plan, material default by the debtor under the plan, and termination of the plan by reason of the occurrence of a condition specified in the plan. This list is not exhaustive. The court will be able to consider other factors as they arise, and to use its equitable powers to reach an appropriate result in individual cases. The power of the court to act *sua sponte* should be used sparingly and only in emergency situations.

Subsection (c) prohibits the court from converting a case concerning a farmer or an eleemosynary institution to a liquidation case unless the debtor consents.

Subsection (d) prohibits conversion of a reorganization case to a chapter 13 case unless the debtor requests conversion and his discharge has not been granted or has been revoked.

Subsection (e) reinforces section 109 by prohibiting conversion of a chapter 11 case to a case under another chapter proceedings under which the debtor is not permitted to proceed.

SUBCHAPTER II—THE PLAN

Section 1121. Who may propose a plan

Subsection (a) permits the debtor to file a reorganization plan with a petition commencing a voluntary case or at any time during a voluntary or involuntary case.

Subsection (b) gives the debtor the exclusive right to file a plan during the first 120 days of the case. There are exceptions, however, enumerated in subsection (c). If a trustee has been appointed, if the debtor does not meet the 120-day deadline, or if the debtor fails to obtain the required consent within 180 days after the filing of the petition, any party in interest may propose a plan. This includes the debtor, the trustee, a creditors' committee, an equity security holders' committee, a creditor, an equity security holder, and an indenture trustee. The list is not exhaustive. In the case of a public company, a trustee is appointed within 10 days of the petition. In such a case, for all practical purposes, any party in interest may file a plan.

Subsection (d) permits the court, for cause, to increase or reduce the 120-day and 180-day periods specified. Since, the debtor has an exclusive privilege for 6 months during which others may not file a plan, the granted extension should be based on a showing of some promise of probable success. An extension should not be employed as a tactical device to put pressure on parties in interest to yield to a plan they consider unsatisfactory.

Section 1122. Classification of claims and equity securities

This section codifies current case law surrounding the classification of claims [28] and equity securities. It requires classification based on the nature of the claims or interests classified, and permits inclusion of claims or interests in a particular class only if the claim or interest being included is substantially similar to the other claims or interests of the class.

Subsection (b), also a codification of existing practice, contains an exception. The plan may designate a separate class of claims consisting only of every unsecured claim that is less than or reduced to an amount that the court approves as reasonable and necessary for administrative convenience.

Section 1123. Contents of plan

Subsection (a) specifies what a plan of reorganization must contain. The plan must designate classes of claims and interests, and specify,

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[28] Payment in cash of small claims in full is common practice in reorganization. *Brockett* v. *Winkle Terra Cotta Co.*, 81 F. 2d 949, 952 (C.A. 8, 1936); *In re New Rochelle Coal & Lumber Co.*, 77 F. 2d 881, 882–83 (C.A. 2, 1935); *In re Realty Associates Security Corp.*, 53 F. Supp. 1010, 1011 (E.D.N.Y., 1943).

by class, the claims or interests that are unimpaired under the plan. Priority claims are not required to be classified because they may not have arisen when the plan is filed. The plan must provide the same treatment for each claim or interest of a particular class, unless the holder of a particular claim or interest agrees to a different. but not better, treatment of his claim or interest.

Paragraph (3) applies to claims, not creditors. Thus, if a creditor is undersecured, and thus has a secured claim and an unsecured claim, this paragraph will be applied independently to each of his claims.

Paragraph (4) of subsection (a) is derived from section 216 of chapter X with some modifications. It requires the plan to provide adequate means for the plans execution. These means may include retention by the debtor of all or any part of the property of the estate, transfer of all or any part of the property of the estate to one or more entities, whether organized pre- or postconfirmation, merger or consolidation of the debtor with one or more persons, sale and distribution of all or any part of the property of the estate, satisfaction or modification of any lien, cancellation or modification of any indenture or similar instrument, curing or waiving of any default, extension of maturity dates or change in interest rates of securities, amendment of the debtor's charter, and issuance of securities.

Subparagraph (C), as it applies in railroad cases, has the effect of overruling *St. Joe Paper Co.* v. *Atlantic Coast Line R.R.*, 347 U.S. 298 (1954). It will allow the trustee or creditors to propose a plan of merger with another railroad without the consent of the debtor, and the debtor will be bound under proposed 11 U.S.C. 1141(a). *See Hearings*, pt. 3, at 1616. "Similar instrument" referred to in subparagraph (F) might include a deposit with an agent for distribution, other than an indenture trustee, such as an agent under an agreement in a railroad conditional sale or lease financing agreement.

Paragraphs (5) and (6) and subsection (b) are derived substantially from Section 216 of Chapter X (11 U.S.C. 616). Paragraph (5) requires the plan to prohibit the issuance of nonvoting equity securities, and to provide for an appropriate distribution of voting power among the various classes of equity securities. Paragraph (6) requires that the plan contain only provisions that are consistent with the interests of creditors and equity security holders, and with public policy with respect to the selection of officers, directors, and trustees, and their successors.

Subsection (b) specifies the matters that the plan may propose. The plan may impair or leave unimpaired any claim or interest. The plan may provide for the assumption or rejection of executory contracts or unexpired leases not previously rejected under section 365. The plan may also provide for the treatment of claims by the debtor against other entities that are not settled before the confirmation of the plan. The plan may propose settlement or adjustment of any claim or equity security belonging to the estate, or may propose retention and enforcement of such claim or interest by the debtor or by an agent appointed for that purpose.

The plan may also propose the sale of all or substantially all of the property of the estate, and the distribution of the proceeds of the sale among creditors and equity security holders. This would be a liquidating plan. The subsection permits the plan to include any other appro-

priate provision not inconsistent with the applicable provisions of the bankruptcy code.

Subsection (c) protects an individual debtor's exempt property by prohibiting its use, sale, or lease under a plan proposed by someone other than the debtor, unless the debtor consents.

Section 1124. Impairment of claims or interests

The basic concept underlying this section is not new. It rests essentially on Section 107 of Chapter X (11 U.S.C. 507), which states that creditors or stockholders or any class thereof "shall be deemed to be 'affected' by a plan only if their or its interest shall be materially and adversely affected thereby."

This section is designed to indicate when contractual rights of creditors or interest holders are not materially affected. It specifies three ways in which the plan may leave a claim or interest unimpaired.

First, the plan may propose not to alter the legal, equitable, or contractual rights to which the claim or interest entitled its holder.

Second, a claim or interest is unimpaired by curing the effect of a default and reinstating the original terms of an obligation when maturity was brought on or accelerated by the default. The intervention of bankruptcy and the defaults represent a temporary crisis which the plan of reorganization is intended to clear away. The holder of a claim or interest who under the plan is restored to his original position, when others receive less or get nothing at all, is fortunate indeed and has no cause to complain. Curing of the default and the assumption of the debt in accordance with its terms is an important reorganization technique for dealing with a particular class of claims, especially secured claims.

Third, a claim or interest is unimpaired if the plan provides for their payment in cash. In the case of a debt liability, the cash payment is for the allowed amount of the claim, which does not include a redemption premium. If it is an equity security with a fixed liquidation preference, such as a preferred stock, the allowed amount is such liquidation preference, with no redemption premium. With respect to any other equity security, such as a common stock, cash payment must be equal to the "value of such holder's interest in the debtor."

Section 1124 does not include payment "in property" other than cash. Except for a rare case, claims or interests are not by their terms payable in property, but a plan may so provide and those affected thereby may accept or reject the proposed plan. They may not be forced to accept a plan declaring the holders' claims or interests to be "unimpaired."

Section 1125. Postpetition disclosure and solicitation

This section extends disclosure requirements in connection with solicitations to all cases under chapter 11. Heretofore this subject was dealt with by the Bankruptcy Act mainly in the special contexts of railroad reorganizations and chapter X cases.

Subsection (a) defines (1) the subject matter of disclosure as "adequate information" and relates the standard of adequacy to an (2) "investor typical of holders or claims or interests of the relevant class." "Investor" is used broadly here, for it will almost always in-

clude a trade creditor or other creditors who orginally had no investment intent or interest. It refers to the investment-type decision by those called upon to accept a plan to modify their claims or interests, which typically will involve acceptance of new securities or of a cash payment in lieu thereof.

Both the kind and form of information are left essentially to the judicial discretion of the court, guided by the specification in subparagraph (a)(1) that it be of a kind and in sufficient detail that a reasonable and typical investor can make an informed judgment about the plan. The information required will necessarily be governed by the circumstances of the case.

Reporting and audit standards devised for solvent and continuing businesses do not necessarily fit a debtor in reorganization. Subsection (a)(1) expressly incorporates consideration of the nature and history of the debtor and the condition of its books and records into the determination of what is reasonably practicable to supply. These factors are particularly pertinent to historical data and to discontinued operations of no future relevance.

A plan is necessarily predicated on knowledge of the assets and liabilities being dealt with an on factually supported expectations as to the future course of the business sufficient to meet the feasibility standard in section 1130(a)(11) of ths title. It may thus be necesasry to provide estimates or judgments for that purpose. Yet it remains practicable to describe, in such detail as may be relevant and needed, the basis for the plan and the data on which supporters of the plan rely.

Subsection (b) establishes the jurisdiction of the court over this subject by prohibiting solicitation of acceptance or rejection of a plan after the commencement of the case, unless the person solicited receives, before or at the time of the solicitation, a written disclosure statement approved by the court, after notice and hearing, as containing adequate information. As under present law, determinations of value, by appraisal or otherwise, are not required if not needed to accomplish the purpose specified in subsection (a)(1).

Subsection (c) requires that the same disclosure statement be transmitted to each member of a class. It recognizes that the information needed for an informed judgment about the plan may differ among classes. A class whose rights under the plan center on a particular fund or asset would have no use for an extensive description of other matters that could not affect them.

Subsection (d) relieves the court of the need to follow any otherwise applicable Federal or state law in determining the adequacy of the information contained in the disclosure statement submitted for its approval. It authorizes an agency or official, Federal or state, charged with administering cognate laws so preempted to advise the court on the adequacy of proposed disclosure statement. But they are not authorized to appeal the court's decision.

Solicitations with respect to a plan do not involve just mere requests for opinions. Acceptance of the plan vitally affects creditors and shareholders, and most frequently the solicitation involves an offering of securities in exchange for claims or interests. The present bank-

ruptcy statute has exempted such offerings under each of its chapters from the registration and disclosure requirements of the Securities Act of 1933, an exemption also continued by section 1145(a)(2) of this title. The extension of the disclosure requirements to all chapter 11 cases justifies the cordinate extension of these exemptions. By the same token, no valid purpose is served not to exempt from the requirements of similar state laws in a matter under the exclusive jurisdiction of the Federal bankruptcy laws.

Subsection (e) exonerates any person who, in good faith and in compliance with this title, solicits or participates in the offer, issuance, sale or purchase, under the plan, of a security from any liability, on account of such solicitation or participation, for violation of any law, rule, or regulation governing the offer, issuance, sale, or purchase of securities. This exoneration is coordinate with the exemption from Federal or State registration or licensing requirements provided by section 1145 of this title.

In the nonpublic case, the court, when approving the disclosure statement, has before it the texts of the plan, a proposed disclosure document, and such other information the plan proponents and other interested parties may present at the hearing. In the final analysis the exoneration which subsection (e) grants must depend on the good faith of the plan proponents and of those who participate in the preparation of the disclosure statement and in the solicitation. Subsection (e) does not affect civil or criminal liability for defects and inadequacies that are beyond the limits of the exoneration that good faith provides.

Section 1125 applies to public companies as well, subject to the qualifications of subsection (f). In case of a public company no solicitations of acceptance is permitted unless authorized by the court upon or after approval of the plan pursuant to section 1128(c). In addition to the documents specified in subsection (b), subsection (f) requires transmission of the opinion and order of the court approving the plan and, if filed, the advisory report of the Securities and Exchange Commission or a summary thereof prepared by the Commission.

Section 1126. Acceptance of plan

Subsection (a) of this section permits the holder of a claim or interest allowed under section 502 to accept or reject a proposed plan of reorganization. The subsection also incorporates a provision now found in section 199 of chapter X that authorizes the Secretary of the Treasury to accept or reject a plan on behalf of the United States when the United States is a creditor or equity security holder.

Subsection (b) governs acceptances and rejections of plans obtained before commencement of a reorganization for a nonpublic company. Paragraph (3) expressly states that subsection (b) does not apply to a public company.

Prepetition solicitation is a common practice under chapter XI today, and chapter IX current makes explicit provision for it. Section 1126(b) counts a prepetition acceptance or rejection toward the required amounts and number of acceptances only if the solicitation of the acceptance or rejection was in compliance with any applicable

nonbankruptcy law, rule, or regulation governing the adequacy of disclosure in connection with such solicitation. If there is not any such applicable law, rule, or regulation, then the acceptance or rejection is counted only if it was solicited after disclosure of adequate information, to the holder, as defined in section 1125(a)(1). This permits the court to ensure that the requirements of section 1125 are not avoided by prepetition solicitation.

Subsection (c) specifies the required amount and number of acceptances for a class of creditors. A class of creditors has accepted a plan if at least two-thirds in amount and more than one-half in number of the allowed claims of the class that are voted are cast in favor of the plan. The amount and number are computed on the basis of claims actually voted for or against the plan, not as under chapter X on the basis of the allowed claims in the class. Subsection (f) excludes from all these calculations claims not voted in good faith, and claims procured or solicited not in good faith or not in accordance with the provisions of this title.

Subsection (c) requires that the same disclosure statement be transmitted to each member of a class. It recognizes that the information needed for an informed judgment about the plan may differ among classes. A class whose rights under the plan center on a particular fund or asset would have no use for an extensive description of other matters that could not affect them.

Subsection (d) relieves the court of the need to follow any otherwise applicable Federal or state law in determining the adequacy of the information contained in the disclosure statement submitted for its approval. It authorizes an agency or official, Federal or state, charged with administering cognate laws so pre-empted to advise the court on the adequacy of proposed disclosure statement. But they are not authorized to appeal the court's decision.

Solicitations with respect to a plan do not involve just mere requests for opinions. Acceptance of the plan vitally affects creditors and shareholders, and most frequently the solicitation involves an offering of securities in exchange for claims or interests. The present Bankruptcy Act has exempted such offerings under each of its chapters from the registration and disclosure requirements of the Securities Act of 1933, an exemption also continued by section 1145 of this title. The extension of the disclosure requirements to all chapter 11 cases is justified by the integration of the separate chapters into the single chapter 11. By the same token, no valid purpose is served by failing to provide exemption from the requirements of similar state laws in a matter under the exclusive jurisdiction of the Federal bankruptcy laws.

Under subsection (d), with respect to a class of equity securities, it is sufficient for acceptance of the plan if the amount of securities voting for the plan is at least two-thirds of the total actually voted.

Subsection (e) provides that no acceptances are required from any class whose claims or interests are unimpaired under the plan or in the order confirming the plan.

Subsection (g) provides that any class denied participation under the plan is conclusively deemed to have rejected the plan. There is obviously no need to submit a plan for a vote by a class that is to re-

ceive nothing. But under subsection (g) the excluded class is like a class that has not accepted, and is a dissenting class for purposes of confirmation under section 1130.

Section 1127. Modification of plan

Under subsection (a) the proponent may file a proposal to modify a plan prior to confirmation. In the case of a public company the modifying proposal may be filed prior to approval.

Subsection (b) provides that a party in interest eligible to file a plan may file instead of a plan a proposal to modify a plan filed by another. Under subsection (c) a party in interest objecting to some feature of a plan may submit a proposal to modify the plan to meet the objection.

After a plan has been confirmed, but before its substantial consummation, a plan may be modified by leave of court, which subsection (d) provides shall be granted for good cause. Subsection (e) provides that a proposal to modify a plan is subject to the disclosure requirements of section 1125 and as provided in subsection (f). It provides that a creditor or stockholder who voted for or against a plan is deemed to have accepted or rejected the modifying proposal. But if the modification materially and adversely affects any of their interests, they must be afforded an opportunity to change their vote in accordance with the disclosure and solicitation requirements of section 1125.

Under subsection (g) a plan, if modified prior to confirmation, shall be confirmed if it meets the requirements of section 1130.

Section 1128. Hearing and approval of plan for a public company

This section applies only to a public company. It continues, as to public companies, the requirement that the plan, which the court approves and later confirms, shall be "fair and equitable." First developed in equity receivership, this standard has been applied for the past 40 years under chapter X. A fair and equitable plan, developed under the direction of a disinterested trusteee as the focal point in the reorganization, and an affirmative and active judicial role, throughout the hearing approval, and confirmation procedures to assure that the plan is fair and equitable, are vital safeguards for public investors. The alternative, a plan negotiated by management and committees likely to be dominated by senior and institutional creditors—essentially a composition would not serve the reorganization needs of a public company.

The procedure for hearing and approval, including the advisory function of the Securities and Exchange Commission with repect to the plan, are derived from chapter X. The hearing under subsection (a) shall be on the trustee's plan and any other plan that may be filed. If he files no plan of his own, the trustee may support or oppose such other plan in light of his duties specified in section 1106(a). The time for hearing is within the discretion of the court.

At the hearing, evidence may be produced regarding the assets and business which are the subject of the plan, and the fairness and feasibility of the plan, including the character and quality of the securities to be issued. Witnesses may be examined and cross-examined at the hearing. The duration of the hearing depends on the nature of the case and the matters and issues in dispute. The hearing provides a means of

establishing a firm factual foundation for the plan of reorganization; the exploration of divergent views in a forum open to all interests; and a judicial decision on the fairness of the plan to all affected thereby. It also ensures that the order authorizing solicitation of acceptances under section 1125 is based on an independent judicial evaluation of the relevant facts and on a searching inquiry into the merits of the plan approved by the court prior to the solicitation.

Subsection (b) requires that the court, prior to approval, refer any plan or plans worthy of consideration for an advisory report to the Securities and Exchange Commission. This provision is derived from section 172 of chapter X (11 U.S.C. 572). In chapter X the reference is mandatory if scheduled indebtedness exceeds $3 million. Under subsection (b) the reference is required only for a public company as defined in section 1101(3), under which total indebtedness must be $5 million or more, but exclusive of trade debt and tax liabilities, and security holders must be in number not less than 1,000. The SEC is required to report within a fixed time set by the court. It is expected that this time will be sufficiently brief so that the report requirement does not delay the confirmation of the plan.

Subsection (c) provides that after the SEC report is filed, upon the expiration of the time allowed, the SEC, or on receipt of information from the SEC that no report is filed, the court shall, after a hearing, approve a plan or plans that it finds fair and equitable and otherwise in compliance with the pertinent statutory provisions. This hearing is ordinarily in the nature of oral argument, with or without briefs. It affords all parties an opportunity to submit to the court their views in light of the evidence and the report of the Securities and Exchange Commission. However, the court is not precluded at this or another hearing from receiving additional evidence, as circumstances may require.

The hearings provided in subsections (a) and (c) avoid postponing to the hearing on confirmation the kind of complex issues to be expected in the case of public companies. After these hearings and with all controversial issues out of the way, the hearing on confirmation of a plan for a public company should be relatively uneventful, calling for a report on acceptances and dissenting classes, if any, and for considering unusual and anticipated developments.

Subsection (d) provides that for purposes of subsection (c) and section 1130 governing confirmation, a plan is not deemed to be not fair and equitable as to particular creditors or security holders who consent to a modification of their participation in favor of junior claims or interests.

Subsection (e) provides that the order of approval is not appealable. Under section 1129(b) any party in interest may object to confirmation of the plan and may appeal from the confirmation order. A right to one appeal is sufficient. An appeal from the order of approval as well could be a source of tactical obstruction.

Section 1129. Confirmation hearing

Subsection (a) requires that there be a hearing in every case on the confirmation of the plan. Notice is required.

Subsection (b) permits any party in interest to object to the confirmation of the plan. The Securities and Exchange Commission and

indenture trustees, as parties in interest under section 1109, may object to confirmation of the plan.

Section 1130. Confirmation of plan

Subsection (a) enumerates the requirement governing confirmation of a plan. The court is required to confirm a plan if and only if all of the requirements are met.

Paragraph (1) requires that the plan comply with the applicable provisions of chapter 11, such as section 1122 and 1123, governing classification and contents of plan.

Paragraph (2) requires that the proponent of the plan comply with the applicable provisions of chapter 11, such as section 1125 regarding disclosure.

Paragraph (3) requires that the plan have been proposed in good faith, and not by any means forbidden by law.

Paragraph (4) is derived from section 221 of chapter X. It requires that any payment made or promised by the proponent, the debtor, or person issuing securities or acquiring property under the plan, for services or for costs and expenses in, or in connection with the case, or in connection with the plan and incident to the case, be disclosed to the court. In addition, any payment made before confirmation must have been reasonable, and any payment to be fixed after confirmation must be subject to the approval of the court as reasonable.

Paragraph (5) is also derived from section 221 of chapter X. It requires the plan to disclose the identity and affiliations of any individual proposed to serve, after confirmation, as a director, officer, or voting trustee of the reorganized debtor. The appointment to or continuance in one of these offices by the individual must be consistent with the interests of creditors and equity security holders and with public policy. The plan must also disclose the identity of any insider that will be employed or retained by the reorganized debtor, and the nature of any compensation to be paid to the insider.

Paragraph (6) permits confirmation only if any regulatory commission that will have jurisdiction over the debtor after confirmation of the plan has approved any rate change provided for in the plan. As an alternative, the rate change may be conditioned on such approval.

Paragraph (7) provides that in the case of a public company the court shall confirm the plan if it finds the plan to be fair and equitable and the plan either (1) has been accepted by classes of claims or interests as provided in section 1126, or (2), if not so accepted, satisfies the requirements of subsection (b) of this section.

Paragraphs (8) and (9) apply only in nonpublic cases. Paragraph (8) does not apply the fair and equitable standards in two situations. The first occurs if there is unanimous consent of all affected holders of claims and interests. It is also sufficient for purposes of confirmation if each holder of a claim or interest receives or retains consideration of a value, as of the effective date of the plan, that is not less than each would have or receive if the debtor were liquidated under chapter 7 of this title. This standard adapts the test of "best interest of creditors" as interpreted by the courts under chapter XI. It is given broader application in chapter 11 of this title since a

plan under chapter 11 may affect not only unsecured claims but secured claims and stock as well.

Under paragraph (9)(A), if a class of claims or interests has not accepted the plan, the court will confirm the plan if, for the dissenting class and any class of equal rank, the negotiated plan provides in value no less than under a plan that is fair and equitable. Such review and determination are not required for any other classes that accepted the plan.

Paragraph 9(A) would permit a senior creditor to adjust his participation for the benefit of stockholders. In such a case, junior creditors, who have not been satisfied in full, may not object if, absent the "give-up", they are receiving all that a fair and equitable plan would give them. To illustrate, suppose the estate is valued at $1.5 million and claims and stock are:

	Claims and stock (millions)	*Equity (millions)*
(1) Senior debt	$1.2	$1.2
(2) Junior debt	.5	.3
(3) Stock	(1)	--
Total	1.7	1.5

Under the plan, the senior creditor gives up $100,000 in value for the benefit of stockholders as follows:

	Millions
(1) Senior debt	$1.1
(2) Junior debt	.3
(3) Stock	.1
Total	1.5

[1] No value.

If the junior creditors dissent, the court may nevertheless confirm the plan since under the fair and equitable standard they had an equity of only $300,000 and the allocation to equity security holders did not affect them.

Paragraph 9(A) provides a special alternative with respect to secured claims. A plan may be confirmed against a dissenting class of secured claims if the plan or order of confirmation provides for the realization of their security (1) by the retention of the property subject to such security; (2) by a sale of the property and transfer of the claim to the proceeds of sale if the secured creditors were permitted to bid at the sale and set off against the purchase price up to the allowed amount of their claims; or (3) by such other method that will assure them the realization of the indubitable equivalent of the allowed amount of their secured claims. The indubitable equivalent language is intended to follow the strict approach taken by Judge Learned Hand in *In Re Murel Holding Corp* 7 5 F.2d 941 (2nd Cir. 1935).

Paragraph (9)(B) provides that, if a class of claims or interests is excluded from participation under the plan, the court may nevertheless confirm the plan if it determines that no class on a parity with or junior to such participates under the plan. In the previous illustration, no confirmation would be permitted if the negotiated plan would grant a participation to stockholders but nothing for junior creditors.

As noted elsewhere, by reason of section 1126(g), an excluded class is a dissenting class under section 1130.

Paragraph (10) states that, to be confirmed, the plan must provide that each holder of a claim under section 507 will receive property, as therein noted, of a value equal to the allowed amount of the claim. There are two exceptions: (A) The holder thereof may agree to a different settlement in part or in whole; (B) where a debtor's business is reorganized under chapter 11, this provision requires that taxes entitles to priority (including administrative claims or taxes) must be paid in cash not later than 120 days after the plan is confirmed, unless the Secretary of the Treasury agrees to other terms or kinds of payment. The bill, as introduced, required full payment in cash within 60 days after the plan is confirmed.

Paragraph (11) requires a determination regarding feasibility of the plan. It is a slight elaboration of the law that has developed in the application of the word "feasible" in Chapter X of the present Act.

Paragraph (12) requires that at least one class must accept the plan, but any claims or interests held by insiders are not to be included for purposes of determining the number and amount of acceptances.

Subsection (b) provides that if, in the case of a public company, the plan meets the requirements of subsection (a) (except paragraphs (8) and (9) which do not apply to such a company), the court is to confirm the plan if the plan or the order of confirmation provides adequate protection for the realization of the value of the claims or interests of each class not accepting the plan. The intent is to incorporate inclusively, as a guide to the meaning of subsection (a) the provisions of section 216(7) (11 U.S.C. 616(7)) with respect to claims and section 216(8) (11 U.S.C. 616(8)) with respect to equity security interests.

Under subsection (c) the court may confirm only one plan, unless the order of confirmation has been revoked under section 1144. If the requirements for confirmation are met with respect to more than one plan, the court shall consider the preferences of creditors and stockholders in deciding which plan to confirm.

Subsection (d) provides that the bankruptcy court may not confirm a plan of reorganization if its principal purpose is the avoidance of taxes or the avoidance of section 5 of the Securities Act of 1933 (15 U.S.C. 77e). This rule modifies a similar provision of present law (section 269 of the Bankruptcy Act).

Section 1131. Real estate liens

This section restricts the ability of a debtor in possession or trustee to modify or alter the rights of a creditor holding a claim or interest secured by a lien upon or security interest in property of the estate which is real estate, chattels real, leasehold estates in real property, or fixtures to the extent that such claim or interest was incurred for the purchase or improvement of such property. The section is designed to afford greater protection from the operation of the cram-down provisions to the more significant real estate financing interests by creating a "safe harbor" that will facilitate, rather than discourage, that type of financing, which will often by law or contract be on a nonrecourse basis. The precise determination of the extent to which a claim or interest was incurred for the purchase or improvement of realty is left

to the courts. There exists ample case law on the question in other areas of commercial and real property law.

Subsection (a) provides two means by which such claims or interests may be altered. First, where a default exists in payment of an installment claim or interest, reinstatement is permitted with defaulted payments of principal and interest to be amortized equally over the life of the reinstated loan at the same rate of interest. Second, and alternatively, repayment of the claim or interest may be extended on a reasonable, equitable, and practicable basis, so long as the value of the interest or claim as extended is the indubitable equivalent of the claim or interest if reinstated under the first alternative. A determination of indubitable equivalence of a debt instrument would in most circumstances be by reference to its present money value.

Subsection (b) specifies that claims or interests held by sellers of such property, by creditors who gave value to permit the acquisition of such property, and by direct or indirect successors in interest to the holders of such claims or interests are included within the coverage of the section.

Subsection (c) specifically excludes liens upon or security interests in the property of a farmer, as well as any claim or interest which is a consumer debt, from the section's coverage.

SUBCHAPTER III—POSTCONFIRMATION MATTERS

Section 1141. Effect of confirmation

Subsection (a) of this section makes the provisions of a confirmed plan binding on the debtor, any entity issuing securities under the plan, any entity acquiring property under the plan, and any creditor, equity security holder, or general partner in the debtor, whether or not the claim or interest of the creditor, equity security holder, or partner is impaired under the plan and whether or not he has accepted the plan. There are two exceptions, enumerated in paragraph (2) and (3) of subsection (d).

Unless the plan or the order confirming the plan provides otherwise, the confirmation of a plan vests all of the property of the estate in the debtor and releases it from all claims and interests of creditors, equity security holders and general partners.

Subsection (d) contains the discharge for a reorganized debtor. Paragraph (1) specifies that the confirmation of a plan discharges the debtor from any debt that arose before the date of the order for relief unless the plan or the order confirming the plan provides otherwise. The discharge is effective against those claims whether or not proof of the claim is filed (or deemed filed), and whether or not the claim is allowed. The discharge also terminates all rights and interests of equity security holders and general partners provided for by the plan. The paragraph permits the plan or the order confirming the plan to provide otherwise, and excepts certain debts from the discharge as provided in paragraphs (2) and (3).

Paragraph (2) of subsection (d) makes clear what taxes remain nondischargeable in the case of a corporate debtor emerging from a reorganization under chapter 11. Nondischargeable taxes in such a reorganization are the priority taxes (under section 507) and tax pay-

ments which come due during and after the proceeding under a deferred or part-payment agreement which the debtor had entered into with the tax authority before the bankruptcy proceedings began. On the other hand, a corporation which is taken over by its creditors through a plan of reorganization will not continue to be liable for nonpriority taxes arising from the corporation's prepetition fraud, failure to file a return, or failure to file a timely return, since the creditors who take over the reorganized company should not bear the burden of acts for which the creditors were not at fault.

Paragraph (3) specifies that the debtor is not discharged by the confirmation of a plan if the plan is a liquidating plan and if the debtor would be denied discharge in a liquidation case under section 727. Specifically, if all or substatially all of the distribution under the plan is of all or substantially all of the property of the estate or the proceeds of it, if the business, if any, of the debtor does not continue, and if the debtor would be denied a discharge under section 727 (such as if the debtor were not an individual or if he had committed an act that would lead to a denial of discharge), the chapter 11 discharge is not granted.

Paragraph (4) authorizes the court to approve a waiver of discharge by the debtor.

Section 1143. Distribution

Section 1143 fixes a 5-year limitation on presentment or surrender of securities or the performance of any other act that is a condition to participation in distribution under the plan. The 5 years runs from the date of the entry of the order of confirmation. Any entity that does not take the appropriate action with the 5-year period is barred from participation in the distribution under the plan.

Section 1144. Revocation of an order of confirmation

If an order of confirmation was procured by fraud, then the court may revoke the order on request of a party in interest if the request is made before 180 days after the date of the entry of the order of confirmation. The order revoking the order of confirmation must revoke the discharge of the debtor, and contain such provisions as are necessary to protect any entity acquiring rights in good faith reliance on the order of confirmation.

Section 1145. Exemption from securities laws

This section, derived from similar provisions found in sections 264, 393, and 518 of the Bankruptcy Act, provides a limited exemption from the securities laws for securities issued under a plan of reorganization and for certain other securities. Subsection (a) exempts from the requirements of section 5 of the Securities Act of 1933 and from any State or local law requiring registration or licensing of an issuer of, underwriter of, or broker or dealer in, a security, the offer or sale of certain securities.

Paragraph (1) of subsection (a) exempts the offer or sale under section 364 of any security that is not an equity security or convertible into an equity security. This paragraph is designed to facilitate the issuance of certificates of indebtedness, and should be read in light of the amendment made in section 306 of title III to section 3(a)(7) of the 1933 act.

Paragraph (2) of subsection (a) exempts the offer or sale of any security of the debtor, a successor to the debtor, or an affiliate in a joint plan, distributed under a plan if such security is exchanged in principal part for securities of the debtor or for allowed claims or administrative expenses. This exemption is carried over from present law, except as to administrative claims, but is limited to prevent distribution of securities to other than claim holders or equity security holders of the debtor or the estate.

Paragraph (3) of subsection (a) exempts the offer or sale of any security that arises from the exercise of a subscription right or from the exercise of a conversion privilege when such subscription right or conversion privilege was issued under a plan. This exemption is necessary in order to enhance the marketability of subscription rights or conversion privileges, including warrants, offered or sold under a plan. This is present law.

Paragraph (4) of subsection (a) exempts sales of portfolio securities, excluding securities of the debtor or its affiliate, owned by the debtor on the date of the filing of the petition. The purpose of this exemption is to allow the debtor or trustee to sell or distribute, without allowing manipulation schemes, restricted portfolio securities held or acquired by the debtor. Subparagraph (B) of section 1145(a)(4) limits the exemption to securities of a company that is required to file reports under section 13 of the Securities Act and that is in compliance with all requirements for the continuance of trading those securities. This limitation effectively prevents selling into the market "cats and dogs" of a nonreporting company. Subparagraph (C) places a limitation on the amount of restricted securities that may be distributed. During the case, the trustee may sell up to 4 percent of each class of restricted securities at any time during the first 2 years and 1 percent during any 180-day period thereafter. This relaxation of the resale rules for debtors in holding restricted securities is similar to but less extensive than the relaxation in SEC Rule 114(c)(3)(v) for the estates of deceased holders of securities.

Paragraph (5) contains an exemption for brokers and dealers (stockbrokers, as defined in title 11) akin to the exemption provided by section 4(3)(A) of the Securities Act of 1933. Instead of being required to supply a prospectus, however, the stockbroker is required to supply the approved disclosure statement, and if the court orders, information supplementing the disclosure statement. Under present law, the stockholder is not required to supply anything.

Subsection (b) is new. The subsection should be read in light of the amendment in section 306 of title III to the 1933 act. It specifies the standards under which a creditor, equity security holder, or other entity acquiring securities under the plan may resell them. The Securities Act places limitations on sales by underwriters. This subsection defines who is an underwriter, and thus restricted, and who is free to resell. Paragraph (1) enumerates real underwriters that participate in a classical underwriting. A person is an underwriter if he purchases a claim against, interest in, or claim for an administrative expense in the case concerning, the debtor, with a view to distribution or interest. This provision covers the purchase of a certificate of indebtedness issued under proposed 11 U.S.C. 364 and purchased from the debtor, if the purchase of the certificate was with a view to distribution.

A person is also an underwriter if he offers to sell securities offered or sold under the plan for the holders of such securities, or offers to buy securities offered or sold under the plan from the holders of such securities, if the offer to buy is with a view to distribution of the securities and under an agreement made in connection with the plan, with the consummation of the plan or with the offer or sale of securities under the plan. Finally, a person is an underwriter if he is an issuer, as used in section 2(11) of the Securities Act of 1933.

Paragraph (2) of subsection (b) exempts from the definition of underwriter any entity to the extent that any agreement that would bring the entity under the definition in paragraph (1) provides only for the matching combination of fractional interests in the covered securities or the purchase or sale of fractional interests. This paragraph and paragraph (1) are modeled after former rule 133 of the Securities and Exchange Commission.

Paragraph (3) specifies that if an entity is not an underwriter under the provisions of paragraph (1), as limited by paragraph (2), then the entity is not an underwriter for the purposes of the Securities Act of 1933 with respect to the covered securities, that is, those offered or sold in an exempt transaction specified in subsection (a)(2). This makes clear that the current definition of underwriter in section (2)(11) of the Securities Act of 1933 does not apply to such a creditor. The definition in that section technically applies to any person that purchases securities with "a view to distribution." If literally applied, it would prevent any creditor in a bankruptcy case from selling securities received without filing a registration statement or finding another exemption.

Subsection (b) is a first run transaction exemption and does not exempt a creditor that, for example, some years later becomes an underwriter by reacquiring securities originally issued under a plan.

Subsection (c) makes an offer or sale of securities under the plan in an exempt transaction (as specified in subsection (a)(2)) a public offering, in order to prevent characterization of the distribution as a "private placement" which would result in restrictions, under rule 144 of the SEC, on the resale of the securities.

Section 1146. Special tax provisions

Section 1146 provides special tax rules applicable to title 11 reorganizations. Subsection (a) provides that the taxable period of an individual debtor terminates on the date of the order for relief, unless the case has been converted into a reorganization from a liquidation proceeding.

Subsection (b) requires the trustee of the estate of an individual debtor in a reorganization to file a tax return for each taxable period while the case is pending after the order for relief. For corporations in chapter 11, the trustee is required to file the tax returns due while the case is pending (sec. 346(c)(2)).

Subsection (c) exempts from Federal, State, or local stamp taxes the issuance, transfer, or exchange of a security, or the making or delivery of an instrument of transfer under a plan. This subsection is derived from section 267 of the present Bankruptcy Act.

Subsection (d) permits the court to authorize the proponent of a reorganization plan to request from the Internal Revenue Service (or State or local tax authority) an advance ruling on the tax effects of the proposed plan. If a ruling is not obtained within 270 days after the request was made, or if a ruling is obtained but the proponent of the plan disagrees with the ruling, the bankruptcy court may resolve the dispute and determine the tax effects of the proposed plan.

Subsection (e) provides that prepetition taxes which are nondischargeable in a reorganization, and all taxes arising during the administration period of the case, may be assessed and collected from the debtor or the debtor's successor in a reorganization (see sec. 505(c) of the bill).

RAILROAD REORGANIZATIONS

Section 1161. Inapplicability of other sections

This section makes inapplicable sections of the bill which are either inappropriate in railroad reorganizations, or relate to matters which are otherwise dealt with in subchapter IV.

Section 1162. Definitions

Two definitions are provided: That Commission means the Interstate Commerce Commission, and that "person" includes a governmental unit for purposes of the subchapter. The latter definition is made necessary because governmental unit is excluded from the definition of person in section 101(30).

Section 1163. Debtors eligible for relief

Debtors eligible for relief under subchapter IV include any common carrier by railroad engaged in either freight or passenger service in either interstate or foreign commerce, as well as any owner of trackage facilities leased by such a carrier. The exclusion in present section 77(m) of street or suburban electric railways is omitted as unnecessary.

Section 1164. Notice to the Commission

Section 1164 requires a copy of every petition initiating a case under this subchapter to be filed with the Interstate Commerce Commission, as does present section 77(a).

Section 1165. Disposition of an involuntary petition; protection

Section 1165 requires the court, in consideration of the relief to be granted upon the filing of an involuntary petition, to take into account the "public interest" in the preservation of the debtor's rail service. This is an important factor in railroad reorganization, which distinguishes them from other business reorganizations. Hence, this section modifies the provisions in sections 303 and 305 that govern generally when the business of a debtor may continue to operate, when relief under the Act sought should be granted, and when the petition should be dismissed.

Section 1166. Appointment of trustee

Requires the court to appoint a trustee in every case. Since the trustee may employ whatever help he needs, multiple trusteeships are unnecessary and add to the cost of administration. The present requirement of section 77(c)(1) that the trustee be approved by the In-

terstate Commerce Commission is unnecessary, since the trustee will be selected either from the panel established under section 606(f) of title 28, or someone certified by the Director of the Administrative Office of the United States Courts as qualified to become a member of that panel.

Section 1167. Duties of trustee

Section 1167 imposes on the trustee the obligations, in addition to his other duties and responsibilities, to take into account the "public interest" in the preservation of the debtor's rail service.

Section 1168. Effect of other laws and regulations

Section 1168 makes the trustee subject to the Interstate Commerce Act and to lawful orders of the Interstate Commerce Commission, the U.S. Department of Transportation, and State and regulatory bodies. The approval of the court is required, however, if the order requires the expenditure of money or the incurring of an expenditure other than the payment of certain interline accounts. The limitation of "lawful orders" of State commissions to those involving "safety, location of tracks, and terminal facilities," which is contained in present section 77(c)(2), is eliminated.

Subsection (1) further provides that the debtor must pay in cash all amounts owed other carriers for current balances owed for interline freight, passenger and per diem, including incentive per diem, fer periods both prior and subsequent to the filing of the petition, without the necessity of court approval.

Subsection (2) makes the provisions of the chapter subject to section 601(b) of the Regional Rail Reorganization Act, which excludes the Interstate Commerce Commission from any participation in the reorganization of certain northeast railroads that have transferred their rail properties to Consolidated Rail Corporation (Conrail).

Section 1169. Transfer and consolidation of cases

Section 1169 vests the judicial panel on multidistrict litigation with authority to transfer cases pending in more than one court to a single court when the cases involve disputes regarding the abandonment of property which would affect the service of, or involve a possible merger or common reorganization plan of, two or more debtors. There is no comparable provision in section 77.

Section 1170. Provisions of the plan

Section 1170 adds to the general provisions required or permitted in reorganization plans by section 1123. Subsection (1) requires that a reorganization plan under the railroad subchapter specify the means by which the value of the claims of creditors and the interests of equity holders which are materially and adversely affected by the plan are to be realized. Subsection (2) permits a plan to include provisions for the issuance of warrants. Subsection (3) requires that the plan provide for fixed charges by probable earnings for their payment. Subsection (4) requires that the plan specify the means by which, and the extent to which, the debtor's rail service is to be continued, and shall identify any rail service to be terminated. Subsection (5) permits other appropriate provisions not inconsistent with the chapter. With the exception of subsection (4), the requirements are com-

parable to those of present section 77(b); subsection (4) emphasizes the public interest in the preservation of rail transportation.

Section 1171. Consideration of a plan by the Commission

Section 1171 imposes on the court, rather than the Interstate Commerce Commission, as in present section 77, the responsibility for the plan of reorganization. The Commission is empowered to make final decisions subject only to review by the court under the standards of the Administrative Procedure Act as to any part of the plan which deals with transportation matters, such as the grant of operating rights of or over, or transfer of, the debtor's rail lines to other carriers.

Subsection (a) requires the trustee to file a plan of reorganization within 18 months after the petition is filed, and permits the court, for good cause shown, to extend such time limit. Subsection (b) permits a plan to be proposed by any interested person, and permits the trustee to revise his plan at any time before it is approved by the court.

Subsections (c), (d) and (e) require the court, when a plan is submitted by the trustee or, if the court deems it worthy of consideration, a plan submitted is proposed by any other person proposes the transfer of, or operation of or over, any of the debtor's lines by other carriers, to refer to such provisions of the plan to the Interstate Commerce Commission. The Commission, within 240 days, and after a hearing if the Commission so determines, is to report to the court the effects of such provisions of the plan in the light of national transportation policy and sections 5(3)(f) (A), (B), and (D), (F)–(I) of the Interstate Commerce Act. The report of the Commission is conclusive in all further hearings on the plan by the court, subject only to review pursuant to 5 U.S.C.S. 706(2) (A)–(D).

Section 1172. Approval of the plan

Section 1172 requires, as does present law, a hearing by the court, on at least 20 days' notice, on approval of a plan. The section permits the court to revise the plan—a power which the court lacks under section 77, and which has resulted in unnecessary references back to the Commission with consequent delays in the approval of a plan that would be acceptable as amended. The report of the Interstate Commerce Commission on any provisions respecting transportation matters is conclusive and may be revised by the court only as provided in section 1171.

Section 1173. Confirmation of plan

Section 1173 adapts the provisions dealing with reorganization plans generally contained in section 1130 to the particular requirements of railroad reorganization plans, as set out in present section 77(e). Subsection (a) specifies the findings which the court must make before approving a plan: (1) The plan complies with the applicable provisions of the chapter; (2) the proponent of the plan complies with the applicable provisions of the chapter; (3) the plan has been proposed in good faith; (4) any payments for services or for costs or expenses in connection with the case or the plan are disclosed to the court and are reasonable, or, if to be paid later, are subject to the approval of the court as reasonable; (5) the proponent of the

plan has disclosed the identity and affiliations of the individuals who will serve as directors, officers, or voting trustees, such appointments or continuations in office are consistent with the interests of creditors, equity security holders, and the proponent the public, and has disclosed the identity and compensation of any insider who will be employed or retained under the plan; (6) that rate changes proposed in the plan have been approved by the appropriate regulatory commission, or that the plan is contingent on such approval; (7) that confirmation of the plan is not likely to be followed by further reorganization or liquidation, unless it is contemplated by the plan; (8) that the plan, if there is more than one, is the one most likely to maintain adequate rail service and (9) that the plan provides the priority traditionally accorded by section 77(b) to claims by rail creditors for necessary services rendered during the 6 months preceding the filing of the petition in bankruptcy.

Subsection (b) continues the present power of the court in section 77(e) to confirm a plan over the objections of creditors or equity security holders who are materially and adversely affected. The subsection also confirms the authority of the court to approve a transfer of all or part of a debtor's property or its merger over the objections of equity security holders if it finds (1) that the "public interest" in continued rail transportation otuweighs any adverse effect on creditors and equity security holders, and (2) that the plan is fair and equitable, affords due recognition to the rights of each class, and does not discriminate unfairly against any class.

Subsection (c) permits modification of a plan confirmed by a final order only for fraud.

Section 1174. Conversion to liquidation

Section 1174 permits the court to convert the case to a liquidation under chapter 7 if the court finds that the debtor cannot be reorganized, or if various time limits specified in the subchapter are not met. Section 77 does not authorize a liquidation of a railroad under the Bankruptcy Act. If the railroad is not reorganizable, the only action open to the court is to dismiss the petition, which would in all likelihood be followed by a State court receivership, with all of its attendant disadvantages. If reorganization is impossible, the debtor should be liquidated under the Bankruptcy Act.

Section 1175. Rolling stock equipment

Section 1175 continues the protection accorded in present section 77(j) to the rights of holders of purchase-money equipment security, and of lessors or conditional vendors of railroad rolling stock, but accords to the trustee a limited period within which to assume the debtor's obligation and to cure any defaults. The rights of such lenders are not affected by the auomatic stay and related provisions of sections 362 and 363, or by any power of the court, unless (1) within 60 days after the commencement of the case (or such longer period as may be agreed to by the secured party, lessor or conditional vendor) the trustees, with the approval of the court, agrees to perform all of the debtor's obligations under the security agreement, lease or conditional sale contract, and (2) all defaults are cured within the 60-day period.

Defaults described in section 365(b)(2)—defaults which are breaches of provisions relating to the insolvency or financial condition of the debtor, or the commencement of a case under this title, or the appointment of a trustee—are, for obvious reasons, excepted.

Section 1176. Collective bargaining agreements

Section 1176 is derived from present section 77(n). It provides that notwithstanding the general section governing the rejection of executory contracts (section 365), neither the court nor the trustee may change the wages or working conditions of employees of the debtor established by a collective bargaining agreement that is subject to the Railway Labor Act, except in accordance with section 6 of that Act. As reported by the subcommittee this section provided that wages and salaries of rail employees could not be affected by the trustee, but that work rules could be rejected by the trustee. The reorganization court was given the authority to review the trustee's decisions and to settle any disputes arising from the rejection. This provision was withdrawn by the full committee, and hearings will be conducted next year by the Human Resources Committee in the area of rail labor contracts and the trustee's ability to reject them in a bankruptcy situation.

Section 1177. Effect of rejection of lease of railroad line

Section 1177 continues, essentially without change, the provisions relating to the rejection by the trustee of a lease of a line of railroad now contained in section 77(c)(6). Subsection (a) requires the lessor of a line of railroad to operate it if the lease is rejected by the trustee and the trustee, with the approval of the court, elects not to operate the leased line. Subsection (b), however, further provides that if operation by the lessor is impractical or contrary to the public interest, the court shall require the trustee to operate the line for the account of the lessor until the operation is lawfully terminated. Subsection (c) provides that during such operation, the lessor is a carrier subject to the Interstate Commerce Act.

Section 1178. Abandonment of railroad line

Subsection (a) of section 1178 permits the court to authorize the abandonment of a railroad line if the abandonment is consistent with the public interest and either in the best interest of the estate or essential to the formulation of a plan. This avoids the normal abandonment requirements of generally applicable railroad regulatory law.

Subsection (b) permits some participation by the Interstate Commerce Commission in the abandonment process. The Commission's role, however, is only advisory. The Commission will represent the public interest, while the trustee and various creditors and equity security holders will represent the interests of those who have invested money in the enterprise. The court will balance the various interests and make an appropriate decision. The subsection specifies that if, except for the pendency of the railroad reorganization case, the proposed abandonment would require Commission approval, then the trustee, with the approval of the court, must initiate an application for the abandonment with the Commission. The court may then fix a time within which the Commission must report to the court on the application.

Subsection (c) permits the court to act after it has received the report of the Commission or the time fixed under subsection (b) has expired, whichever occurs first. The court may then authorize the abandonment after notice and a hearing. The notice must go to the Commission, the Secretary of Transportation, the trustee, and party in interest that has requested notice, any affected shipper or community, and any other entity that the court specifies.

Subsection (d) stays the enforcement of an abandonment until the time for taking an appeal has expired, or if an appeal has been taken, until the order has become final. However, the court may, and after notice and a hearing, on request of a party in interest authorize termination of service on the line or a portion of the line pending the determination of the appeal. The notice required is the same as that required under subsection (c). If the court authorizes termination of service pending determination of the appeal, an appellant may not obtain a stay of the enforcement of the order authorizing termination, either by the giving of a supersedeas bond or otherwise, during the pendency of the appeal.

Chapter 13—Adjustment of Debts of an Individual With Regular Income

Subchapter I—Officers, Administration and the Estate

Section 1301. Stay of action against codebtor

Subsection (a) automatically stays the holder of a claim based on a consumer debt of the chapter 13 debtor from acting or proceeding in any way, except as authorized pursuant to subsections (b) and (c), against an individual or the property of an individual liable with the chapter 13 debtor, unless such codebtor became liable in the ordinary course of his business, or unless the case is closed, dismissed, or converted to another chapter.

Under the terms of the argreement with the codebtor who is not in bankruptcy, the creditor has a right to collect all payments to the extent they are not made by the debtor at the time they are due. To the extent to which a chapter 13 plan does not propose to pay a creditor his claims, the creditor may obtain relief from the court from the automatic stay and collect such claims from the codebtor. Conversely, a codebtor obtains the benefit of any payments made to the creditor under the plan. If a debtor defaults on scheduled payments under the plan, then the codebtor would be liable for the remaining deficiency; otherwise, payments not made under the plan may never be made by the codebtor. The obligation of the codebtor to make the creditor whole at the time payments are due remains.

The automatic stay under this section pertains only to the collection of a consumer debt, defined by section 101(7) of this title to mean a debt incurred by an individual primarily for a personal, family, or household purpose. Therefore, not all debts owed by a chapter 13 debtor will be subject to the stay of the codebtor, particularly those business debts incurred by an individual with regular income, as defined by section 101(24) of this title, engaged in business, that is permitted by virtue of section 109(b) and section 1304 to obtain chapter 13 relief.

Subsection (b) excepts the giving of notice of dishonor of a negotiable instrument from the reach of the codebtor stay.

Under subsection (c), if the codebtor has property out of which the creditor's claim can be satisfied, the court can grant relief from the stay absent the transfer of a security interest in that property by the codebtor to the creditor. Correspondingly, if there is reasonable cause to believe that property is about to be disposed of by the codebtor which could be used to satisfy his obligation to the creditor, the court should lift the stay to allow the creditor to perfect his rights against such property. Likewise, if property is subject to rapid depreciation or decrease in value the stay should be lifted to allow the creditor to protect his rights to reach such property. Otherwise, the creditor's interest would be irreparably harmed by such stay. Property which could be used to satisfy the claim could be disposed of or encumbered and placed beyond the reach of the creditor. The creditor should be allowed to protect his rights to reach property which could satisfy his claim and prevent its erosion in value, disposal, or encumbrance.

Section 1302. Trustee

The principal administrator in a chapter 13 case is the chapter 13 trustee. Experience under chapter XIII of the Bankruptcy Act has shown that the more efficient and effective wage earner programs have been conducted by standing chapter XIII trustees who exercise a broad range of responsibilities in both the design and the effectuation of debtor plans.

Subsection (a) provides administrative flexibility by permitting the bankruptcy judge to appoint an individual from the panel of trustees established pursuant to 28 U.S.C. § 604(f) and qualified under section 322 of title 11, either to serve as a standing trustee in all chapter 13 cases filed in the district or a portion thereof, or to serve in a single case.

Subsection (b)(1) makes it clear that the chapter 13 trustee is no mere disbursing agent of the monies paid to him by the debtor under the plan [section 1322(a)(1)], by imposing upon him certain relevant duties of a liquidation trustee prescribed by section 704 of this title.

Subsection (b)(2) requires the chapter 13 trustee to appear before and be heard by the bankruptcy court whenever the value of property secured by a lien or the confirmation or modification of a plan after confirmation as provided by sections 1323–1325 is considered by the court.

Subsection (b)(3) requires the chapter 13 trustee to advise and counsel the debtor while under chapter 13, except on matters more appropriately left to the attorney for the debtor. The chapter 13 trustee must also assist the debtor in performance under the plan by attempting to tailor the requirements of the plan to the changing needs and circumstances of the debtor during the extension period.

Subsection (c) imposes on the trustee in a chapter 13 case filed by a debtor engaged in business the investigative and reporting duties normally required of a chapter 11 debtor or trustee as prescribed by section 1106(a)(3) and (4).

Section 1303. Rights and powers of debtor

A chapter 13 debtor is vested with the identical rights and powers, and is subject to the same limitations in regard to their exercise, as those given a liquidation trustee by virtue of section 363(b), (d), (e), (f), and (h) of title 11, relating to the sale, use or lease of property.

Section 1304. Debtor engaged in business

Increased access to the simpler, speedier, and less expensive debtor relief provisions of chapter 13 is accomplished by permitting debtors engaged in business to proceed under chapter 13, provided their income is sufficiently stable and regular to permit compliance with a chapter 13 plan [section 101(24)] and that the debtor (or the debtor and spouse) do not owe liquidated, noncontingent unsecured debts of $50,000, or liquidated, noncontingent secured debts of $200,000 (§ 109(d)).

Section 1304(a) states that a self-employed individual who incurs trade credit in the production of income is a debtor engaged in business.

Subsection (b) empowers a chapter 13 debtor engaged in business to operate his business, subject to the rights, powers and limitations that pertain to a trustee under section 363(c) and 364 of title 11, and subject to such further limitations and conditions as the court may prescribe.

Subsection (c) requires a chapter 13 debtor engaged in business to file with the court certain financial statements relating to the operation of the business.

Section 1305. Filing of claims; allowance of postpetition claims

Section 1305, exclusively applicable in chapter 13 cases, supplements the provisions of sections 501–511 of title 11, dealing with the filing and allowance of claims. Sections 501–511 apply in chapter 13 cases by virtue of section 103(a) of this title. Section 1305(a) provides for the filing of a proof of claim for taxes and other obligations incurred after the filing of the chapter 13 case. Subsection (b) prescribes that section 502 of title 11 governs the allowance of section 1305(a) claims, except that its standards shall be applied as of the date of allowance of the claim, rather than the date of filing of the petition. Subsection (c) requires the disallowance of a postpetition claim for property or services necessary for the debtor's performance under the plan, if the holder of the claim knew or should have known that prior approval by the trustee of the debtor's incurring of the obligation was practicable and was not obtained.

Subsection (d) is the successor to section 656(b) of the Bankruptcy Act. Section 1305(d) recognizes the inequity to chapter 13 debtors and their creditors alike of permitting a usurious or other invalid claim to share in distributions under the chapter 13 plan. It is envisioned that appropriate rules will be adopted mandating procedures for assuring the provision of proof by a chapter 13 creditor that the claim is free from any charge forbidden by applicable law, including usury.

Section 1306. Property of the estate

Section 541 is expressly made applicable to chapter 13 cases by section 103(a). Section 1306 broadens the definition of property of the

estate for chapter 13 purposes to include all property acquired and all earnings from services performed by the debtor after the commencement of the case.

Subsection (b) nullifies the effect of section 521(3), otherwise applicable, by providing that a chapter 13 debtor need not surrender possession of property of the estate, unless required by the plan or order of confirmation.

Section 1307. Conversion or dismissal

Subsections (a) and (b) confirm, without qualification, the rights of a chapter 13 debtor to convert the case to a liquidating bankruptcy case under chapter 7 of title 11, at any time, or to have the chapter 13 case dismissed. Waiver of any such right is unenforceable. Subsection (c) specifies various conditions for the exercise of the power of the court to convert a chapter 13 case to one under chapter 7 or to dismiss the case. Subsection (d) deals with the conversion of a chapter 13 case to one under chapter 11. Subsection (e) prohibits conversion of the chapter 13 case filed by a farmer to chapter 7 or 11 except at the request of the debtor. No case is to be converted from chapter 13 to any other chapter, unless the debtor is an eligible debtor under the new chapter.

SUBCHAPTER II—THE PLAN

Section 1321. Filing of plan

Chapter 13 contemplates the filing of a plan only by the debtor.

Section 1322. Contents of plan

Chapter 13 is designed to serve as a flexible vehicle for the repayment of part or all of the allowed claims of the debtor. Section 1322 emphasizes that purpose by fixing a minimum of mandatory plan provisions.

Subsection (a) requires that the plan submit whatever portion of the future income of the debtor is necessary to implemnt the plan to the control of the trustee, mandates payment in full of all section 507 priority claims, and requires identical treatment for all claims of a particular class.

Subsection (b) permits a chapter 13 plan to (1) divide unsecured claims not entitled to priority under section 507 into classes in the manner authorized for chapter 11 claims; (2) modify the rights of holders of secured and unsecured claims, except claims wholly secured by real estate mortgages; (3) cure or waive any default; (4) propose payments on unsecured claims concurrently with payments on any secured claim or any other class of unsecured claims; (5) provide for curing any default on any secured or unsecured claim on which the final payment is due after the proposed final payment under the plan; (6) provide for payment of any allowed postpetition claim; (7) assume or reject any previously unrejected executory contract or unexpired lease of the debtor; (8) propose the payment of all or any part of any claim from property of the estate or of the debtor; (9) provide for the vesting of property of the estate; and (10) include any other provision not inconsistent with other provisions of title 11.

Subsection (c) limits the payment period under the plan to 3 years, except that a 4-year payment period may be permitted by the court.

Section 1323. Modification of plan before confirmation

The debtor is permitted to modify the plan before confirmation without court approval so long as the modified plan, which becomes the plan on filing, complies with the requirements of section 1322.

The original acceptance or rejection of a plan by the holder of a secured claim remains binding unless the modified plan changes the rights of the holder and the holder withdraws or alters its earlier acceptance or rejection.

Section 1324. Confirmation hearing

Any party in interest may object to the confirmation of a plan, as distinguished from merely rejecting a plan. An objection to confirmation is predicated on failure of the plan or the procedures employed prior to confirmation to conform with the requirements of chapter 13. The bankruptcy judge is required to provide notice and an opportunity for hearing any such objection to confirmation.

Section 1325. Confirmation of plan

The bankruptcy court must confirm a plan if (1) the plan satisfies the provisions of chapter 13 and other applicable provisions of title 11; (2) it is proposed in good faith; (3) it is in the best interests of creditors, and defined by subsection (a) (4) of Section 1325; (4) it has been accepted by the holder of each allowed secured claim provided for the plan or where the holder of any such secured claim is to receive value under the plan not less than the amount of the allowed secured claim, or where the debtor surrenders to the holder the collateral securing any such allowed secured claim; (5) the plan is feasible; and (6) the requisite fees and charges have been paid.

Subsection (b) authorizes the court to order an entity, as defined by Section 101(15), to pay any income of the debtor to the trustee. Any governmental unit is an entity subject to such an order.

Section 1326. Payments

Section 1326 supplements the priorities provisions of section 507. Subsection (a) requires accrued costs of administration and filing fees, as well as fees due the chapter 13 trustee, to be disbursed before payments to creditors under the plan. Subsection (b) makes it clear that the chapter 13 trustee is normally to make distribution to creditors of the payments made under the plan by the debtor.

Section 1327. Effect of confirmation

Subsection (a) binds the debtor and each creditor to the provisions of a confirmed plan, whether or not the claim of the creditor is provided for by the plan and whether or not the creditor has accepted, rejected, or objected to the plan. Unless the plan itself or the order confirming the plan otherwise provides, confirmation is deemed to vest all property of the estate in the debtor, free and clear of any claim or interest of any creditor provided for by the plan.

Section 1328. Discharge

The court is to enter a discharge, unless waived, as soon as practicable after completion of payments under the plan. The debtor is to be discharged of all debts provided for by the plan or disallowed under section 502, except a debt provided for under the plan the last

payment on which was not due until after the completion of the plan, or a debt incurred for willful and malicious conversion of or injury to the property or person of another.

Subsection (b) is the successor to Bankruptcy Act Section 661. This subsection permits the bankruptcy judge to grant the debtor a discharge at any time after confirmation of a plan, if the court determines, after notice and hearing, that the failure to complete payments under the plan is due to circumstances for which the debtor should not justly be held accountable, the distributions made to each creditor under the plan equal in value the amount that would have been paid to the creditor had the estate been liquidated under chapter 7 of title 11 at the date of the hearing under this subsection, and that modification of the plan is impracticable. The discharge granted under subsection (b) relieves the debtor from all unsecured debts provided for by the plan or disallowed under section 502, except nondischargeable debts described in section 523(a) of title 11 or debts of the type covered by section 1322(b)(5).

Subsection (d) excepts from any chapter 13 discharge a debt based on an allowed section 1305(a)(2) postpetition claim, if prior trustee approval of the incurring of the debt was practicable but was not obtained.

A chapter 13 discharge obtained through fraud and before the moving party gained knowledge of the fraud may be revoked by the court under subsection (e), after notice and hearing, at the request of any party in interest made within 1 year after the discharge was granted.

Section 1329. Modification of plan after confirmation

At any time prior to the completion of payments under a confirmed plan, the plan may be modified, after notice and hearing, to change the amount of payments to creditors or a particular class of creditors and to extend or reduce the payment period. A modified plan may not contain any provision which could not be included in an original plan as prescribed by section 1322. A modified plan may not call for payments to be made beyond four years as measured from the date of the commencement of payments under the original plan.

Section 1330. Revocation of an order of confirmation

The court may revoke an order of confirmation procured by fraud, after notice and hearing, on application of a party in interest filed within 180 days after the entry of the order. Thereafter, unless a modified plan is confirmed, the court is to convert or dismiss the chapter 13 case as provided in section 1307.

Section 1331. Special tax provision

This special tax provision is parallel to subsection 1146(e) in allowing assessment and collection of nondischargeable taxes, as well as administrative period taxes, against the debtor in a chapter 13 case. The taxing authority, however, may accept provisions of the plan in a particular case dealing with the assumption, settlement, or payment of any such taxes.

Section 1331 does not include a provision of the bill as introduced, which limited tax assessments against the debtor, including assessments for a nondischargeable tax liability, to the period of 1 year following the date of the filing of the petition.

TITLE II—AMENDMENTS TO TITLE 28 UNITED STATES CODE AND TO THE FEDERAL RULES OF EVIDENCE

Section 201. Establishment of bankruptcy court; bankruptcy judges

Section 201 amends Title 28, United States Code, by adding a new chapter 6, providing for the establishment, jurisdiction and powers, staffing, organization and administration of independent bankruptcy courts. Chapter 6 comprises 16 sections (§§ 151–166) made effective October 1, 1979, by virtue of section 402(a) of this Act.

Section 151. Creation and composition of bankruptcy courts

Subsection (a) establishes in each judicial district a court of record, as an adjunct of the U.S. district court, to be known as the bankruptcy court for such district.

Subsection (b) specifies that the bankruptcy court for each judicial district is comprised of the active bankruptcy judges appointed for the district.

Subsection (c) permits exercise of the judicial power of the bankruptcy court by a single bankruptcy judge.

Section 152. Appointment; qualifications; tenure; oath; removal

Subsection (a) empowers each court of appeals to appoint bankruptcy judges, in such numbers and at such locations within the circuit as are determined by the Judicial Conference pursuant to section 153 of title 28, United States Code, as enacted by section 201 of this act. The chief judge of the circuit is to make the apponitment in case the concurrence of a majority of the active circuit judges cannot be obtained.

The Judicial Conference of the United States may authorize the appointment of a bankruptcy judge to serve in more than one circuit. Where a majority vote of the active judges of each circuit in which the bankruptcy judge is to serve has not been obtained, the appointment is to be made by the chief circuit judge senior in service.

Subsection (b) prescribes the professional and other qualifications of individuals to serve as bankruptcy judges. Qualifications include bar membership in good standing for at least 5 years at the time of appointment and competence as determined by the judicial council of the circuit. Additional qualification standards may be prescribed by the Judicial Conference of the United States, as provided by subsection (b)(4). Other qualifications are set forth in subsections (c) and (e) of this section.

Subsection (c) prescribes a 12-year term of office for bankruptcy judges appointed under new 28 U.S.C. § 152. The present 6-year term is insufficient to attract the calibre of individual needed to perform the highly demanding and important functions of the office of bankruptcy judge. By doubling the term of office for future bankruptcy judges it is anticipated that a major goal of this reform legislation, the establishment of a functionally independent bankruptcy court, can be further advanced.

A bankruptcy judge whose term expires is permitted to continue to serve until a successor is appointed and qualifies. With specific ex-

ceptions for retired or reserve military personnel, a bankruptcy judge may not hold employment with the U.S. Government. An individual may not continue to serve as a bankruptcy judge after reaching 70 years of age without the unanimous approval of the judges of the judicial council of the circuit.

Subsection (d) prescribes the same oath of office for bankruptcy judges as for district court judges.

Subsection (e) requires each bankruptcy judge to maintain residence in a district for which he is appointed, or, in the case of the District of Columbia, within 20 miles. Subsection (f) authorizes the chief judge of the circuit to require a bankruptcy judge to maintain his abode in or near a particular place in the district, unless the bankruptcy judges are able to agree among themselves which of them shall do so.

Subsection (g) sets forth the grounds upon which and prescribes the procedures by which the removal of a bankruptcy judge may be accomplished. Incompetence, misconduct, neglect of duty and disability, as determined by the judicial council of the circuit, are the sole grounds for removal. The bankruptcy judge is entitled to be heard on the charges against him.

The restrictive nature of the grounds for removal of a bankruptcy judge requires that they construed since they are intended to insulate the bankruptcy court from improper challenges to its judicial independence.

Section 153. Numbers and locations of bankruptcy judges

Subsection (a) requires the Director of the Administrative Office of U.S. Courts to make continuing studies to determine the numbers and locations of bankruptcy judges necessary to provide effective and expeditious bankruptcy administration. The Director is instructed to take local conditions and suggestions into account before making recommendations to the various bodies specified in subsection (b).

Subsections (b) and (c) authorize the Judicial Conference of the United States, acting on the recommendations of the Director, the district courts, and the judicial councils of the circuits, to determine and, from time to time, alter the numbers and locations of bankruptcy judgeships. It is envisioned that the recommendations of the district courts will represent the views of the bankruptcy courts, which can be expected to possess the requisite familiarity and expertise.

Subsection (d) authorizes the filling of a vacancy in the office of bankruptcy judge by the circuit court, as provided by 28 U.S.C. § 152, unless the position is discontinued by the Judicial Conference, after such vacancy occurs, in the manner prescribed by subsection (c).

Section 154. Chief judge; precedence of bankruptcy judges

The internal organization of the bankruptcy courts is patterned after that of the district courts as concerns the precedence of bankruptcy judges (§ 154), the division of business among bankruptcy judges (§ 155), the times for holding sessions of court (§ 156), adjournment of court (§ 157), special sessions (§ 158), accommodations (§ 159), vacancy in judgeships as affecting proceedings (§ 160) and temporary assignments of bankruptcy judges (§ 165).

Subsection (a) of section 154 of title 28, United States Code, as amended by section 201 of this act, declares that whichever bankruptcy judge is senior in service, but under 70 years of age, shall serve as the chief judge of the bankruptcy court of the district. A bankruptcy judge must have served at least 1 year on the bankruptcy bench before he may serve as chief judge of the bankruptcy court.

Subsection (b) gives the chief judge precedence and the right to preside at any session of the court or judges that he attends. Bankruptcy judges junior in service to the chief judge have precedence according to the seniority of their commissions.

Subsection (c) states that a bankruptcy judge appointed to serve in more than one district is the junior judge in all districts, except that in which he resided upon appointment to the bankruptcy bench.

Subsection (d) authorizes the Chief Justice of the United States to designate the bankruptcy judge next in precedence who is willing to serve as chief bankruptcy judge to replace a bankruptcy judge who resigns as chief judge but remains in active service.

Subsection (e) authorizes the active bankruptcy judge next in service who is present and able to serve as chief judge in the event of the temporary inability of the chief judge to perform his duties.

Subsection (f) provides that service as a referee in bankruptcy and service as a bankruptcy judge are to be taken into account in determining seniority of commissions under section 154.

Section 155. Division of business among bankruptcy judges

Section 155 prescribes that the business of the bankruptcy court for each district is to be divided among the active bankruptcy judges of the district as provided by the rules and orders of the bankruptcy court. The chief judge of the bankruptcy court is responsible for securing compliance with such rules and orders, and for dividing the business and assigning cases among the active bankruptcy judges of the district where rules and orders of the bankruptcy court fail to do so. The district court of the district wherein the bankruptcy court sits is to make necessary orders for the division of business among bankruptcy judges where such bankruptcy court rules and orders are not in existence, action by the chief judge of the bankruptcy court is not forthcoming within a reasonable time and the concurrence of the bankruptcy judges of the district cannot be obtained.

Section 156. Times for holding regular sessions

Section 156 authorizes regular sessions, including continuous sessions, of the bankruptcy court as determined by the rules or orders of the bankruptcy court.

Section 157. Adjournment

Subsection (a) authorizes the bankruptcy court to adjourn or, with the consent of the chief judge of the bankruptcy court of the district, to pretermit any regular session for cause.

Subsection (b) enables the clerk of the bankruptcy court to adjourn court where no bankruptcy judge is able to do so.

Section 158. Special sessions; places; notice

Special sessions of the bankruptcy court may be held anywhere in the district and on such notice as is ordered by the bankruptcy court, for the purpose of transacting whatever business is required.

Section 159. Accommodations at places for holding court

Court may be held at any location within the district where suitable quarters and accommodations are furnished without cost to the United States. The General Service Administration may provide quarters and accommodations for the bankruptcy court, at cost to the United States, with the approval of the judicial council of the circuit.

Section 160. Vacant judgeship as affecting proceedings

The clerk of the bankruptcy court shall continue all pending process, pleadings, and proceedings until a successor or replacement judge is appointed or designated, whenever the office of a bankruptcy judge becomes vacant.

Section 161. Bias or prejudice of bankruptcy judge

Section 161 requires that the bankruptcy judge against whom an affidavit of bias or prejudice is filed proceed no further in the pending matter and that it be heard, by another bankruptcy judge. The affidavit must be filed at least 10 days before the pending matter is to be heard or good cause must be shown for later filing. It must state facts and reasons for the belief that bias or prejudice exists and be accompanied by a certificate of counsel of record that it is made in good faith.

Section 162. Practice of law

An active bankruptcy judge may not engage in any business occupation, or employment, including the practice of law, inconsistent with the expeditious, proper, and impartial performance of the duties of a bankruptcy judge.

Section 163. Compensation; benefits

Subsection (a) provides for compensation for a bankruptcy judge at the current annual rate of $48,500, subject to adjustment under section 225 of the Federal Employees Salary Act and 28 U.S.C. § 461.

Subsection (b) provides that all bankruptcy judges and their employees are officers and employees in the judicial branch of the Government within the meaning of chapter 83 (subchapter III) (civil service retirement), chapter 87 (Federal employees' group life insurance), and chapter 89 (Federal employees' health benefits) of title 5, United States Code.

Section 164. Powers of bankruptcy judges

Subsection (a) generally confers upon bankruptcy judges in active service the exclusive power to perform all judicial functions arising in cases and proceedings under title 11 and in actions and proceedings brought under 28 U.S.C. § 1334, as amended by section 216 of this Act except in municipal adjustment and railroad reorganization cases. Subsection (a)(3) empowers bankruptcy judges to administer oaths and affirmations.

Subsection (b) of section 164 of title 28, United States Code, vests jurisdiction to determine appeals from judgments and orders of a bankruptcy judge with the U.S. district court for the district in which the case, action, or proceeding in which the order or judgment appealed from was entered is pending. Unless a notice of appeal is filed with the bankruptcy judge within 10 days, or within any extended period granted within the 10 day period by the bankruptcy

court, the order of judgment is final. In the event the bankruptcy court refuses to suspend the execution or enforcement of any order or judgment from which a timely appeal is taken, the district court may do so on the application of any party in interest on such terms as will protect the rights of all parties in interest.

Subsection (c), like section 1334(d)(2)(A) of title 28, United States Code, as amended by section 216 of this act, prohibits the enjoining of a court by a bankruptcy judge.

Subsection (d) constitutes certain conduct in bankruptcy proceedings a contempt of the U.S. district court for the district in which the case or proceeding out of which the contempt arises is pending. Any conduct which would constitute a contempt if committed before a judge of a district court constitues a contempt when committed before a bankruptcy judge. A bankruptcy judge may impose a fine of not more than $1,000 for contempt of court and is to certify the facts to a judge of the district court when the contempt warrants imprisonment or a fine in excess of $1,000.

Section 165. Temporary assignment of bankruptcy judges

Subsection (a) permits the chief judge of the circuit to make temporary intracircuit assignments of bankruptcy judges to perform judicial duties in other districts.

Subsection (b) permits the chief judge of a circuit, with the consent of the chief judge of the other circuit, to make temporary intercircuit assignments of bankruptcy judges to perform duties in any district within a circuit other than that in which is located the district in which the bankruptcy judge was appointed to serve.

Subsection (c) permits the temporary assignment of a retired bankruptcy judge by the chief judge of the circuit, with the consent of both the Director of the Administrative Office of the U.S. Courts and the retired bankruptcy judge, to serve in any judicial district where there is a vacancy in the office of a bankruptcy judge or the expeditious transaction of the business of the court so requires. While actually engaged in such service, the retired bankruptcy judge is to be considered a reemployed annuitant within the meaning of the civil service laws and may not engage, during such service, in any activity inconsistent with the performance of the duties of the office of bankruptcy judge. See section 162, title 28, United States Code, as enacted by section 201 of this act. The provisions of subsection (c) are designed to make clear that the practice of law and similar activities are not permitted by retired bankruptcy judges during any period that they are in active service on the bankruptcy bench pursuant to subsection (c) of this section.

Subsection (d) requires the bankruptcy judge to discharge all the judicial duties for which he is designated and assigned.

Section 166. Expenses; facilities

Section 166 authorizes and mandates the provision and payment by the Director of the Administrative Office of U.S. Courts of all necessary secretarial and other supporting personnel, courtrooms, office space, furniture and facilities reasonably required for the performance of the duties of bankruptcy judge. It is elsewhere made clear that a clerk of the bankruptcy court, deputy clerks and clerical assistants

(§ 757), secretaries and law clerks (§ 758) and court reporters (§ 759) are reasonably required and therefore to to be made available to bankruptcy judges.

It is envisioned that the bankruptcy judge or judges shall appoint and direct all employees in the performance of bankruptcy court duties, without any involvement on the part of the district court, including the district judge himself and the clerk of the district court. Individuals in the employ of the bankruptcy court may be removed at the pleasure of the bankruptcy judge or judges, as provided by section 760, title 28, United States Code, as enacted by section 214(a) of this act.

Section 202

This section amends section 331 of title 28 of the United States Code to create an additional position on the Judicial Conference of the United States to be filled by a bankruptcy judge. The representative of the bankruptcy judges on the Judicial Conference will be selected by the bankruptcy judges. In the event the bankruptcy judge so selected is unable to attend, the Chief Justice may designate a bankruptcy judge to attend the Conference. The representation of bankruptcy judges in the Conference is similar to the participation on the Judicial Conference by judges of the Court of Claims and Court of Customs and Patent Appeals.

During the past decade the number of bankruptcy cases and controversies arising within bankruptcy cases handled by bankruptcy judges has far exceeded the combined number of civil and criminal cases filed in the district courts. The failure of the Judicial Conference to adapt to this phenomenon is indicated by the fact that bankruptcy judges have been systematically excluded from membership on the Bankruptcy Committee of the Judicial Conference. Testimony at the hearings indicates the Judicial Conference has not at all times given adequate consideration to the needs of the bankruptcy courts. Representation on the Conference should insure adequate representation and consideration of the views of bankruptcy judges.

Section 203

This section amends section 332(d) of title 28 of the United States Code to place bankruptcy judges under the direction of the judicial council of the circuit. Section 332(d) of title 28 of the United States Code authorizes each judicial council to make all necessary orders for the effective and expeditious administration of the business of the courts within the circuit and, as amended, provides that bankruptcy judges as well as district judges shall promptly carry into effect all orders of the judicial council. This is a conforming amendment.

Section 204

This section amends section 333 of title 28 of the United States Code to include bankruptcy judges as participants in circuit conferences which are held annually for the purpose of considering the business of the courts and advising means of improving the administration of justice within the circuit. As amended, the section will require the chief judge of the circuit to summon the chief judge of each bankruptcy court within the circuit to the conference. In view of the fact

that bankruptcy cases constitute a major portion of the caseload of the Federal courts, it seems appropriate that bankruptcy judges should participate in conferences called for the purpose of considering the business of the courts.

Section 205

This section makes a conforming change to section 455 of title 28 of the United States Code by substituting the term "bankruptcy judge" for "referee in bankruptcy."

Section 206

This section amends the catchline of 28 U.S.C. 460 to repeal an obsolete reference to Alaska as a territory. References to Alaska in the body of the section were eliminated by Public Law 85–508.

Section 207

This section makes a conforming change to 28 U.S.C. 526(a)(2) substituting the term "bankruptcy judge" for "referee in bankruptcy" and deleting a reference to receivers in bankruptcy. Section 105(b) of title I of the bill precludes the appointment of a receiver in a case under title II.

Section 208

This section amends section 604(a) of title 28 of the United States Code relating to the powers of the Director of the Administrative Office of the U.S. Courts. It requires the Director to lay before Congress, annually, statistical tables that will accurately reflect the business transacted in cases and proceedings under title 11.

Section 209

This section adds a new subsection (f) to 28 U.S.C. 604 relating to the duties of the Director of the Administrative Office of the U.S. Courts. The Director is empowered to establish a panel of trustees for each bankruptcy court and to name qualified persons to membership on the panel. The number and qualifications of persons named to membership on the panel of private trustees shall be determined by rules and regulations adopted by the Director. It is intended that these rules and regulations will upgrade the caliber of private trustees and insure that any favoritism, real or apparent, is prevented. Persons and corporations named to membership on the panel of trustees must meet certain residency requirements. A corporation named to membership on the panel of trustees must be authorized by its charter to act as trustee. The Director may remove a person from the panel of trustees. Promptly upon the entry of an order of relief (which occurs concurrently with the filing of a petition in a voluntary case) the court must appoint an interim trustee from the panel of trustees to serve until he is replaced by a trustee elected by creditors. If the creditors fail to elect a trustee, the trustee appointed by the court continues to serve until the case is concluded.

Section 210

This section adds bankruptcy courts to the definition of "courts" found in section 610 of chapter 41, relating to the Administrative Office of the U.S. Courts.

Section 211

This section makes a conforming amendment to 28 U.S.C. 620(b)(3) by substituting the term "bankruptcy judges" for the term "referees."

Section 212

This section amends 28 U.S.C. 621 which establishes the Board of the Federal Judical Center. A proposal that was considered by the Committee but not deemed necessary for adoption at this time. The amendment requires the Board of the Federal Judical Center to consult with a representative of the bankruptcy judges and the representative of the magistrates on matters directly affecting bankruptcy judges and magistrates. The representative of the bankruptcy judges and the representative of the magistrates, who are to act as liaison with the Board of the Federal Judical Center, are to be selected by the bankruptcy judges and the magistrates in any manner they see fit. The amendment does not place a bankruptcy judge on the Board of the Federal Judicial Center.

Section 213

This section makes a conforming amendment in 28 U.S.C. 634(a) relating to the salaries of magistrates. Language which pegs the salaries of full-time and part-time magistrates to the salaries of full-time and part-time referees in bankruptcy is deleted and the maximum salary figure allowable to a magistrate under current law is inserted. This change will not affect the maximum salaries now allowable for magistrates. The amendment, along with the amendment to the Federal Salary Act of 1967 made by section 301 of title III of this bill, does place the maximum salary allowable to magistrates in the future under the auspices of the Quadrennial Salary Commission.

Section 214.

Subsection (a) of this section amends chapter 49 of title 28 of the United States Code, providing for the staffing of the district courts, by adding at the end thereof four new sections relating to clerks, court reporters and other employees of the bankruptcy courts. The four new sections are as follows:

Section 757. Clerk of bankruptcy courts

Subsection (a) permits each bankruptcy court to appoint a clerk. The clerk is subject to removal by the court.

Subsection (b) permits the clerk, with the approval of the court, to appoint necessary deputies, clerical assistants and employees in such number as may be approved by the Director of the Administrative Office of the U.S. Courts. Such deputies, clerical assistants, and employees are subject to removal by the clerk, with the approval of the bankruptcy court.

Subsection (c) specifies that the clerk of the bankruptcy court must reside in the district for which he is appointed. The bankruptcy court is permitted to designate places within the district for the offices of the clerk and his deputies, and their official stations.

Subsection (d) prohibits the clerk, his deputy, or assistant from receiving any compensation or emolument through any office or position to which he is appointed by the court, other than that received as

clerk, deputy, or assistant, whether from the United States or from private litigants.

Subsection (e) requires the clerk of each bankruptcy court to pay into the Treasury all fees, costs, and other moneys collected by him, except uncollected fees not required by Act of Congress to be prepaid. The clerk is also required to make returns of the money collected to the Director of the Administrative Office of the U.S. Courts under regulations prescribed by the Director.

Section 758. Other employees of bankruptcy courts

This section is designed to provide the bankruptcy court with adequate staff. Bankruptcy judges are authorized to appoint law clerks, secretaries, and other necessary employees, subject to any limitation on the aggregate salaries of such employees which may be imposed by law. The employees which the bankruptcy judges are authorized to appoint under this section are in addition to those authorized under section 757.

Section 759. Records of proceedings in bankruptcy courts; reporters

Subsection (a) requires the bankruptcy court to have a record made, whenever practicable, of all proceedings in cases had in open court. The Director of the Administrative Office of the U.S. Courts is authorized to prescribe that the record be taken by electronic sound recording, by a court reported appointed or employed by the bankruptcy court to take a verbatim record by shorthand or mechanical means, or by an employee of the court designated by the court to take such a verbatim record. Flexibility is allowed in the use of electronic sound recording devices because of the technological development of sound recording devices which are in wide use today and are adequate for the purpose. It shall be left to the discretion of the Director to authorize the appropriate mode of recordation of bankruptcy court proceedings.

Subsection (b) requires that a transcript of the original record of a proceeding that has been recorded be made and delivered promptly to any party to a proceeding or the judge on request. A certified transcript is deemed prima facie a correct statement of the testimony taken and the proceedings had. Transcripts made from other than the certified records of the court are not to be considered official transcripts.

Subsection (c) governs fees for transcripts in proceedings to persons permitted to appeal in forma pauperis.

Section 760. Power to appoint and remove employees of bankruptcy courts

This section gives bankruptcy judges the power to appoint and remove employees. Whenever the majority of the bankruptcy judges of any bankruptcy court cannot agree upon the appointment of any employee of such court, the chief judge shall make the appointment. Even though the bankruptcy court is an adjunct of the district court, the district judges are not given any power over the appointment or removal of employees of the bankruptcy court. Moreover, this section is written to make it clear that the district courts have no authority to order employees of the bankruptcy court merged into the office of the clerk of the district court and placed under the supervision of the clerk of the district court. The office of the clerk of the bankruptcy court is

to be maintained as separate from the office of the district court clerk. The clerk of the bankruptcy court and the clerical employees of the office are to function under the direct supervision of the bankruptcy judge.

Subsection (b) of this section amends the table of sections for chapter 49 of title 28 of the United States Code by adding at the end thereof the numbers and headings of sections relating to the staff of the bankruptcy courts.

Section 215

This section makes a conforming change to 28 U.S.C. 957(a), extending certain restrictions on clerks of court to clerks of bankruptcy courts.

Section 216

This section amends 28 U.S.C. 1334 relating to the jurisdiction of the U.S. district courts over bankruptcy proceedings. In deference to concern over the splintering of the jurisdiction of the district courts, original and exclusive jurisdiction of all bankruptcy cases shall remain in the district court, and the jurisdiction of the district courts over bankruptcy matters is expanded to include all controversies arising out of or related to a case under title 11. However, a statutory scheme has been adopted whereby the totality of this jurisdiction, subject only to the exceptions set forth in subsection (d) of this section, shall be exercised by the bankruptcy court, which is created as an adjunct of each U.S. district court.

Subsection (a) of this section gives the U.S. district courts original and exclusive jurisdiction of all cases under title 11. To facilitate the exercise of this jurisdiction by the bankruptcy court provision is made elsewhere for the case to be filed directly with the clerk of the bankruptcy court. See section 220 of title II of this bill.

Subsection (b) grants to the U.S. district courts original, but not exclusive, jurisdiction of all civil proceedings arising under title 11 or arising under or related to cases under title 11. This broad grant of jurisdiction will enable the bankruptcy courts, which are created as adjuncts of the district court for the purpose of exercising the jurisdiction, to dispose of controversies that arise in bankruptcy cases or under the bankruptcy code. Actions that formerly had to be tried in the State court or in the Federal district court, at great cost and delay to the estate, may now be tried in the bankruptcy court. The idea of possession and consent as bases for jurisdiction is eliminated. The adjunct bankruptcy courts will exercise in personam jurisdiction as well as in rem jurisdiction in order that they may handle everything that arises in a bankruptcy case.

The jurisdiction to be exercised by the bankruptcy courts is of all proceedings arising under title 11 or arising under or related to a case under title 11. The term "proceeding" is used instead of "matters and proceedings," the terminology currently used in the Bankruptcy Act and Rules. As used in this section everything that occurs in a bankruptcy case is a proceeding. Thus, proceeding here is used in its broadest sense, and would encompass what are now called contested matters, adversary proceedings, and plenary actions under current bankruptcy law. It also includes and disputes related to administrative matters in

a bankruptcy case. Likewise, the term proceeding includes issues which may arise after a case is closed, such as in a controversy over a reaffirmation agreement under section 524(b) of title I of the bill.

The phrase "arising under title 11" will enable the bankruptcy court to hear any matter under which a claim is made under a provision of title 11. The combination of the three bases for jurisdiction, "arising under title 11," "arising under a case under title 11," and "related to a case under title 11," will leave no doubt as to the scope of the jurisdiction over disputes to be exercised by the bankruptcy court.

Subsection (c) permits the bankruptcy court, in the interest of justice, to abstain from hearing a particular proceeding arising under title 11 or arising under or related to a case under title 11, and makes the abstention, or a decision not to abstain, nonreviewable. The subsection recognizes there may be cases in which it is more appropriate to have a State court hear a particular matter of State law.

Subsection (d), when read in conjunction with section 164 of chapter 6 of title 28, as enacted by section 201 of this bill, restricts the power of the bankruptcy judge in only two areas which have traditionally been reserved to district judges, (1) the enjoining of another court, and (2) the imposition of punishment for contempt of court. District judges are to conduct cases under chapter 9 and railroad reorganization cases under chapter 11. Otherwise, bankruptcy judges shall have full and complete responsibility for cases under title 11 and all litigation arising out of such cases. The use of the term "may" in this section is not intended to imply that the district court has any discretion whatsoever in withholding bankruptcy cases or civil proceedings arising under title 11 or arising under or related to a case under title 11 from the bankruptcy court. The powers of the bankruptcy judge enumerated in section 164 include the power to conduct all proceedings under title 11 except in municipal adjustment and railroad reorganization cases, and the power to conduct trials and all other proceedings in actions under section 1334(b) of this title. It is the intent of these provisions that the bankruptcy court will receive and the bankruptcy judge will handle cases and proceedings under title 11, and that all actions filed under section 1334(b) except those arising in connection with municipal adjustment and railroad reorganization cases will be automatically referred to the bankruptcy judge. It is contemplated that rules of Bankruptcy Procedure will be adopted to carry out this intent in order that the bankruptcy judge shall exercise the full range of jurisdiction in bankruptcy cases and proceedings. Except for municipal adjustment and railroad reorganization cases, the district judge will be expected to act in title 11 cases only in limited instances (1) where it is necessary to enjoin a State or Federal court or (2) to punish a person for contempt by imprisonment or by a fine of more than $1,000. Otherwise, the district judge will function only as an appellate judge in bankruptcy matters, as provided in subsection (e) of this section.

Subsection (e)(1) confers upon the district court for each judicial district jurisdiction of appeals from (A) final decisions and interlocutory orders of the bankruptcy court in bankruptcy cases, and (B) final judgments, orders, and decrees of the bankruptcy court for such district in proceedings arising under title 11 or arising under or

related to cases under title 11. Subsection (e)(2) provides that the decisions of the bankruptcy court shall be final unless a notice of appeal to a district judge is timely filed. It is contemplated that the manner and time for filing a notice of appeal will be set forth in Rules of Bankruptcy Procedure.

Section 217.

This section makes a technical amendment to 28 U.S.C. 1360(a) relating to the status of Alaska as a territory.

Section 218.

Subsection (a) of this section amends chapter 87 of title 28 of the United States Code relating to venue of civil actions in the U.S. district courts by adding at the end thereof three new sections specifying venue requirements in bankruptcy cases and proceedings. These new sections are as follows:

Section 1408. Venue of proceedings under title 11

This section governs the venue for commencement of a bankruptcy case. The section permits the commencement of a bankruptcy case in the judicial district in which the domicile, residence, principal place of business, or principal assets of the debtor have been located for 180 days preceding the bankruptcy, or for the greater part of that 180-day period than in any other judicial district. An affiliate, general partner, or partnership of a debtor may commence a case in the judicial district in which the debtor's case is pending. This section is derived from section 2a(1) of the Bankruptcy Act and rule 116 of the Rules of Bankruptcy Procedure. The section does not apply to cases ancillary to foreign proceedings.

Section 1409. Venue of proceedings arising under or related to cases title 11

Subsection (a) of this section specifies that the court in which the bankruptcy case is pending is always proper venue for proceedings arising under title 11 or arising under or related to a case under title 11, with two exceptions as enumerated in subsections (b) and (d) of this section.

Subsection (b) creates an exception which prevents unfairness to distant debtors of the estate, when the cost of defending might be greater than paying the debt owed. This section specifies that a proceeding by a trustee to recover a money judgment of less than $1,000 or a consumer debt of less than $5,000 must be commenced in the district in which the defendant resides. For example, if a store doing a major part of its business through catalog sales took bankruptcy, the trustee could not file suit in the bankruptcy court in which the case is pending to collect from customers owing for merchandise ordered from catalogs. The debts owed by such customers generally speaking would be consumer debts. This subsection (b) requires a suit to collect a consumer debt of less than $5,000 to be filed in the judicial district in which the defendant resides.

Subsection (b) creates an exception which prevents unfairness to successor to the debtor or creditors under section 541 or 544(b) of title I of this bill. The proper venue for such actions is the district where the debtor or the creditors, as the case may be, could have brought the action to which the trustee succeeds.

Subsection (d) relates to claims in favor of the debtor arising out of the operation of the debtor's business after the commencement of the case. The trustee may commence a proceeding on such a claim only in the judicial district in which the debtor could have sued on the claim in the absence of bankruptcy.

Subsection (e) relates to claims against the debtor arising out of the operation of the debtor's business after commencement of the case. A party adverse to the estate may sue the representative of the estate (either the debtor in possession or the trustee) on such a claim in the district where the adverse party could have sued on the claim in the absence of bankruptcy.

Section 1410. Venue of cases ancillary to foreign proceedings

Subsection (a) prescribes the proper venue for a case commenced under section 304 of title I of this bill. Cases to enjoin the commencement or continuation of an action or proceeding in a State or Federal court or the enforcement of a judgment may be commenced only in the district where that court sits.

Subsection (b) permits cases ancillary to foreign proceedings to enjoin lien enforcement or to require turnover of property to be commenced only in the district where the property is located.

Subsection (c) permits other cases ancillary to foreign proceedings to be commenced only in the judicial district in which is located the principal place of business in the United States, or the principal assets in the United States, of the estate which is the subject of the case.

Subsection (d) amends the table of sections for chapter 87 of title 28 of the United States Code by adding sections relating to the venue of bankruptcy cases and proceedings.

Section 219

Subsection (a) amends chapter 89 of title 28 of the United States Code relating to removal of cases from State courts, by adding a new section covering removal of bankruptcy matters and proceedings.

Section 1451. Removal of bankruptcy matters and proceedings

Subsection (a) of this section permits removal of any claim or cause or cause of action to the district court for the district where such a case or proceeding is pending, if the district courts have jurisdiction over such claim or cause of action. The application for removal shall be presented to and acted upon by the bankruptcy judge and if removal is granted the claim or cause of action shall be tried by the bankruptcy judge. Only a proceeding before the U.S. Tax Court or a civil action by a governmental unit to enforce such governmental unit's police or regulatory power is nonremovable.

Subsection (b) permits the court to which a claim or cause of action has been removed to remand the claim or cause of action on any equitable ground. An order of the bankruptcy judge remanding a claim or cause of action is not reviewable by appeal or otherwise.

Subsection (c) amends the table of sections for chapter 89 of title 28 of the United States Code by inserting the number and heading of the new section relating to removal of bankruptcy matters and proceedings.

Section 220

Subsection (a) of this section amends chapter 121 of title 28 of the United States Code relating to trial by jury by adding at the end thereof a new section dealing with jury trials in cases and proceedings under title 11.

Section 1875. Jury trials in cases and proceedings under title 11

Subsection (a) continues any current right of a litigant in a case or proceeding under title 11 or related to such a case, to a jury trial.

Subsection (b) permits the issues arising on the trial of an involuntary petition in bankruptcy to be tried without a jury.

Subsection (b) amends the table of sections of chapter 121 of title 28 of the United States Code by adding at the end thereof the number and heading of the new section dealing with jury trials in cases and proceedings under title 11.

Section 221

Subsection (a) of this section amends chapter 123 of title 28 of the United States Code relating to fees and costs by inserting at the end thereof a new section dealing with bankruptcy fees.

Section 1930. Bankruptcy fees

Subsection (a) of this section fixes the filing fee for a bankruptcy case at $60. Under current law the filing fee is $30, not including an additional $15 confirmation fee, for a chapter XIII case and $50 for a straight bankruptcy, chapter XI, or chapter XII case. The filing fee is somewhat higher for cases under chapters IX, X, and section 77. An individual instituting a voluntary bankruptcy case may pay the filing fee in installments.

Subsection (b) permits the Director of the Administrative Office of the U.S. Courts, with approval of the Judicial Conference, to prescribe additional fees, including fees to be assessed against bankrupt estates similar to the fees currently assessed pursuant to section 40c of the Bankruptcy Act. A proviso limits the maximum assessment against an estate to $100,000. The Director, with the approval of the Conference, is authorized to promulgate rules and regulations governing assessment of these fees.

Subsection (c), copied from 28 U.S.C. 1917, governs fees upon the filing of a notice of appeal or application for appeal.

Subsection (d) governs the payment of costs in instances where a case or proceeding is dismissed for want of jurisdiction.

Subsection (e) prohibits the clerk of the bankruptcy court from collecting any fees other than those prescribed under this section.

Subsection (b) of section 220 amends the table of sections of chapter 123 of title 28 of the United States Code by adding at the end thereof the number and heading of the new section relating to bankruptcy fees.

Section 222

This section makes a conforming change and a major change in 28 U.S.C. 2075 which authorizes the Supreme Court to prescribe rules of practice and procedure for the bankruptcy courts. The first change is

a conforming change which merely deletes a reference to the Bankruptcy Act and inserts in lieu thereof a reference to title 11. The second change repeals the last sentence of 28 U.S.C. 2075 which provides that rules supersede provisions of the Bankruptcy Act in conflict with the rules. This bill extensively revises the bankruptcy law. Nearly all procedural matters have been removed and left to the Rules of Bankruptcy Procedure. Consequently, the need to permit the Supreme Court's rules to supersede the statute no longer exists. To the extent a rule is inconsistent, the statute will govern.

Section 223

This section amends 28 U.S.C. 2201 relating to declaratory judgments, to except from the prohibition on declaratory judgment on tax matters, the two instances provided for under the bankruptcy code, relating to relief of a trustee from personal liability for taxes owing by the estate [11 U.S.C. 505(c)] and the tax effects of a reorganization [11 U.S.C. 1146(d)].

Section 224

Subsection (a) of this section adds a new section 2256 to chapter 153 of title 28, relating to writ of habeas corpus:

§ 2256. Habeas corpus from bankruptcy courts

Under this section, the bankruptcy court is authorized to issue the writ of habeas corpus when appropriate to bring a person before the court for examination, to testify, or to perform a duty imposed on him under title 28. The court may also issue the writ to release a debtor in custody under the judgment of a State or Federal court if the debtor was arrested or imprisoned on process in a civil action, if the process was issued for the collection of a debt that is dischargeable in bankruptcy or that is or will be provided for in a reorganization or individual repayment plan, and if the person holding the debtor in custody is given notice and a hearing in order to contest the issuance of the writ.

Subsection (b) of section 223 of the bill adds a reference to new section 2256 to the table of sections of chapter 153 of title 28.

Section 225

This section amends rule 1101(a) of the Federal Rules of Evidence to delete a reference to referees in bankruptcy and insert a reference to bankruptcy judges in lieu thereof. The section further amends rule 1101(b) to delete a reference to the Bankruptcy Act and to substitute a reference to title 11 of the United States Code in lieu thereof.

Section 226

Subsection (a) of this section amends section 8339 of Title 5 of the United States Code relating to the computation of the annuity payable to persons retiring under the civil service law. The significant amendment provides for computation of the annuity payable to a bankruptcy judge at the same rate used in computing the annuity for Members of Congress or congressional employees. The other amendments are conforming amendments.

Subsection (b) amends section 8334(c) of title 5 of the United States Code relating to the deductions, contributions and deposits

required to be withheld from the pay of an employee or Member for credit to the civil service retirement fund. The contribution of a bankruptcy judge is increased to 8 percent after June 30, 1979, which is the same contribution now made by a Member of Congress, or employees of Members.

Subsection (c) amends section 8341 of Title 5 of the United States Code relating to survivor annuities to provide for survivors of bankruptcy judges the same annuity provided for employees or Members of Congress.

Subsection (d) makes a conforming amendment to section 8344 (a)(A) of Title 5 of the United States Code relating to annuities and payments of reemployed annuitants.

Subsection (e) amends section 8331 of title 5 of the United States Code containing definitions for purposes of Civil Service retirement so as to insert at the end thereof a definition of "bankruptcy judge." Bankruptcy judge is defined as a judge who is appointed or serves after October 1, 1979, the effective date of this act. This definition precludes inclusion of prior service as a referee in bankruptcy, or bankruptcy judge when computing the annuity payable to a bankruptcy judge at the increased rate provided for by this act.

TITLE III—AMENDMENTS TO OTHER ACTS

Section 301

This section makes a conforming amendment to the Federal Salary Act of 1967. It deletes the cross-reference to referees in bankruptcy in section 402(d) of the Federal Judiciary Salary Act of 1964 and inserts a reference to magistrates, needed because magistrates' salaries are currently based on referees' salaries (28 U.S.C. 634(a)).

Section 302

This section adds to the Commodity Exchange Act a section that gives the Commodity Futures Trading Commission (CFTC) rulemaking authority in connection with commodity broker bankruptcies. It was recommended by the Chairman of the CFTC, William Bagley. The CFTC is given the authority to provide that certain cash, securities, other property, or open contractual commitments are to be included in or excluded from customer property or member property (as defined in 11 U.S.C. 761), or to be specifically identifiable to a particular customer in a specific capacity; the method by which the business of the commodity broker debtor is to be conducted or liquidated after the case is commenced: and how the net equity of a customer is to be determined; and indicate the persons to which customer property and commodity contracts may be transferred under section 770 of title 11 of the U.S. Code.

Subsection (b) provides that terms used in the section added to the Commodity Exchange Act are to be construed in pari materia with the Commodity Broker Liquidation subchapter of the bankruptcy code, with the exception that the terms "commodity options dealer", "commodity contract", and "clearing organization" may be altered by rule or order of the Commission.

Section 303

This section amends section 4 of the Perishable Agricultural Commodities Act by conforming it with policy contained in section 525 of the proposed bankruptcy code. It is amended to prohibit denial or revocation of a license solely on the basis of the filing of bankruptcy petition, without consideration of the factors that may have led to the bankruptcy. Under subsection (e), a license may be revoked in the event of bankruptcy if the circumstances surrounding the bankruptcy warrant. The section as amended does not prohibit consideration of financial responsibility in licensing determinations, but simply requires a deeper look than the fact of bankruptcy.

Section 304

This section deletes references to bankruptcy found in section 21(a) of the Agricultural Adjustment Act (7 U.S.C. 623(a)). That section, as written, prohibits the institution of a suit, action, or proceeding, including a bankruptcy case, that has the effect of restraining the collection of any tax imposed under that Act. That language amounts to a near absolute prohibition on bankruptcy, because the filing of a petition in bankruptcy operates as an automatic stay of collection efforts against the debtor. The treatment of taxes and their payment in bankruptcy cases is handled exhaustively in the proposed bankruptcy code. The reference to bankruptcy is proposed to be deleted for that reason.

Section 305

Section 305 makes a conforming amendment to the first section of the Act entitled "An Act to authorize the Secretary of Agriculture to compromise, adjust, or cancel certain indebtedness, and for other purposes," approved December 20, 1944 (58 Stat. 837; 12 U.S.C. 1150). The "Bankruptcy Act or under title 11 of the United States Code" is substituted for the former long title of the Bankruptcy Act.

Section 306

This section makes two changes in the Securities Act of 1933, that conform it to proposed 11 U.S.C. 1145 (Exemption from securities laws). First, the provision in paragraph (7) of section 3(a) is amended to remove exempt status from a bankruptcy trustee's certificates. This is covered by 11 U.S.C. 1145(a)(1). Second, exempt status is denied for securities issued in a bankruptcy case (primarily reorganizations) in exchange for other securities of the same issuer. Paragraphs (9) and (10) of section 3(a) of the Securities Act now appear to grant exempt status though the SEC has enforced the exemption as transactional rather than as an exempt security. Section 306 of this bill inserts at the beginning of each of those paragraphs the phrase "Except with respect to a security exchanged in a case under title 11 of the United States Code." These kinds of securities are dealt with by 11 U.S.C. 1145(a)(2) and (3).

Section 307

This section makes a conforming amendment to the Trust Indenture Act of 1939, striking out the former long title of the Bankruptcy Act and inserting "Bankruptcy Act or title 11 of the United States Code".

Section 308

The Securities Investor Protection Act of 1970 presently contains numerous cross-references to the Bankruptcy Act. This section changes those cross-references to conform with proposed title 11 of the United States Code.

Subsection (a) conforms the cross-reference to the definition of "insolvent" in the Bankruptcy Act, and deletes reference to acts of bankruptcy, which are eliminated under the proposed bankruptcy code.

Subsection (b) changes the cross-reference to the courts presently handling bankruptcy cases to the courts that will have jurisdiction of bankruptcy cases under the proposed bankruptcy code.

Subsection (c) changes the cross-reference to the definition of "disinterested" in the Bankruptcy Act.

Subsection (d) adds a reference to title 11 of the United States Code immediately after a reference to the Bankruptcy Act.

Subsection (e) is a conforming amendment to section 6(b)(1) of SIPA, changing a reference to a trustee in a Chapter X case to a trustee in a case under title 11.

Subsection (f) amends section 6(c)(2) of SIPA, which makes inapplicable the stockholder liquidation provisions in 60e of the Bankruptcy Act. The references will now be to subchapter III of chapter 7 of title 11.

Subsection (g) amends section 6(c)(1) of SIPA, which now incorporates by reference the bulk of the substantive law provisions of Chapter X of the Bankruptcy Act. The amendment cross-references the new title 11 instead.

Subsection (h) amends section 6(c)(2) of SIPA, which makes inapplicable the stockbroker liquidation provisions in 60e of the Bankruptcy Act. The references will now be to subchapter III of chapter 7 of title 11.

Subsection (i) changes a cross-reference to the Bankruptcy Act to one to title 11 of the United States Code.

Subsection (j) changes a cross-reference to the definition of "securities" in the Bankruptcy Act to one in the bankruptcy code.

Subsection (k) changes the cross-reference to priority claims to conform to the proposed bankruptcy code.

Subsection (l) changes a reference to the Bankruptcy Act to a reference to title 11 of the United States Code.

Subsection (m) changes a cross-reference to the notice provisions of the Bankruptcy Act.

Subsection (n) changes a cross-reference to the trustee's investigative duties under the Bankruptcy Act.

Section 309

This section amends the Public Utility Holding Company Act of 1935 by changing a cross-reference to bankruptcy to one to a case under title 11 of the United States Code.

Section 310

Subsection (a) changes a cross-reference in section 2(a)(8) of the Investment Company Act of 1940 to bankruptcy to one to a case under title 11.

Subsection (b) does the same in section 6(a)(2) of that Act.

Subsection (c) changes the reference to the Bankruptcy Act in section 25(d) of the Investment Company Act to a reference to title 11 of the United States Code.

Section 311

This section amends the Investment Advisers Act of 1940 by striking out a reference to bankruptcy in section 202(a)(5) and inserting a reference to a case under title 11 of the United States Code in its place.

Section 312

Subsection (a) amends section 302(b)(2) of the Consumer Credit Protection Act by changing the cross-reference to a court of bankruptcy under Chapter XIII of the Bankruptcy Act to a cross-reference to the court of the United States having jurisdiction over cases under chapter 13 of title 11 of the United States Code.

Subsection (b) amends section 605(a)(1) of the Fair Credit Reporting Act by changing a reference to a bankruptcy adjudication to include a reference to the order for relief under the proposed bankruptcy code.

Section 313

Section 313 makes conforming amendments to chapter 9 of title 18 of the United States Code, the chapter dealing with bankruptcy crimes in the criminal code. Subsection (a) changes references to bankrupts to references to debtors, references to bankruptcy proceeding to references to cases under title 11, and references to bankruptcy law to references to the provisions of title 11.

Subsection (b) makes a conforming amendment to the definitions in section 151 of the 18. Subsection (c) deletes references to receivers in bankruptcy, and makes a stylistic change to conform to the new style of title 11, relating to books and records.

Subsection (d) deletes references to receiver in bankruptcy in section 153.

Subsection (e) deletes references to referees in bankruptcy and receivers. The term "bankruptcy judge" replaces the term referee."

Subsection (f) changes references to bankruptcy proceeding in section 155 to references to cases under title 11 of the United States Code.

Subsection (g) changes a reference in section 1961 of the criminal code to bankruptcy fraud to a reference to fraud connected with a case under title 11.

Subsection (h) makes the same change in section 2516(1)(e) of the criminal code.

Subsection (i) deletes reference to referee in bankruptcy and inserts bankruptcy judge in lieu thereof in section 3057 of the criminal code, and changes a reference to violations of the bankruptcy laws to a reference to violation under chapter 9 of title 18. These changes conform this section with the revision of the Backruptcy Act and criminal code under which bankruptcy crimes were removed from the Bankruptcy Act and placed in title 18.

Subsection (j) changes a reference in section 3284 to bankrupt to a reference to debtor in a case under title 11.

Subsection (k) inserts in section 6001(4) a reference to a United States bankruptcy court established under chapter 6 of title 28 of the United States Code. This amendment, which enlarges the definition of court in Part V of the criminal code, relating to immunity for witnesses, conforms with the provision found in section 344 of proposed title 11.

Section 314

This section deletes a reference to receiver in bankruptcy found in section 485(f) of the Tariff Act of 1930.

Section 315

This section changes a reference in section 302(1)(3) of the Automotive Products Trade Act of 1965 to bankruptcy to a reference to cases under title 11 of the United States Code.

Section 316

This section repeals a provision of the Higher Education Act of 1965, section 423A, which excepts certain guaranteed student loan and Federally insured student loans from bankruptcy discharge for a five-year period. This exception to the discharge is found in section 523(a)(8) of the proposed bankruptcy code.

Section 317

This section makes a conforming amendment to section 239(d) of the Foreign Assistance Act of 1969 relating to the priority of the Government in insolvency situations. It conforms to the amendment made by section 321 of the bill to the Government's priority.

Section 318

This section changes a cross-reference in the National Labor Relations Act, section 2(1). The present cross-reference is to bankruptcy; the new one is to cases under title 11 of the United States Code.

Section 319

This section changes a reference to bankruptcy in section 3(d) of the Labor-Management Reporting and Disclosure Act of 1959 to a reference to cases under title 11 of the United States Code.

Section 320

Section 320 changes a cross-reference in subsection (f) of the same section from court of bankruptcy to court having jurisdiction over cases under title 11 of the United States Code.

Subsection (b) makes two changes in section 4062(c)(2) of ERISA, changing cross-references to conform to the new terminology.

Subsection (c) does the same in section 4068(c)(2) of ERISA.

Section 321

Subsection (a) of this section amends section 3466 of the Revised Statutes of the United States to make the Government's general priority in insolvency cases inapplicable in cases under title 11 of the United States Code. This conforms section 3466 with the change made to section 64a of the Bankruptcy Act by section 507 of title 11, eliminating the Government's non-tax priority.

The amendment to Revised Statutes 3466 applies to claims or liens that are given the priority of the United States under other laws of the United States.

Subsection (b) makes a conforming change in section 3467 of the Revised Statutes, by relieving a bankruptcy trustee from personal liability for nonpayment of Government claims in bankruptcy cases, where the Government is not entitled to priority.

Subsections (c), (d), and (e) repeal deadwood in the Revised Statutes, specifically, sections 3469, 3473, and 3474, relating to compromise of claims by the United States and to payment of Government claims in gold or silver coin. Subsection (f) makes a conforming change in the table of contents of that title of the Revised Statutes.

Subsection (g) repeals an archaic provision in the Revised Statutes making inapplicable the bankruptcy laws of the United States with respect to the Union Pacific Railroad Company.

Section 322

This section changes a reference to bankruptcy in the Act entitled "An Act to provide for the alteration of certain bridges over navigable waters of the United States, for the apportionment of the cost of such alterations between the United States and the owners of such bridges, and for other purposes", approved June 21, 1940 (54 Stat. 497; 33 U.S.C. 511).

Section 323

This section repeals section 17(a) of the Longshoremen's and Harbor Workers' Compensation Act of 1927, which provides a special priority and super-priority lien to the holder of a workmen's compensation claim when the employer of the worker or the insurance carrier involved files under the bankruptcy laws.

Bankruptcy policy strongly favors equality of treatment of all creditors, and strongly disfavors the creation of property rights upon the filing of a bankruptcy case. The purpose of bankruptcy is to enforce rights that have arisen before bankruptcy, and to enforce them in an orderly liquidation process. Springing interests unfairly defeat legitimate expectations of other creditors who may have relied on the absence of any such prior interests in extending credit. Section 67 of the present Bankruptcy Act and section 545 of proposed title 11 of the United States Code implement this important bankruptcy policy.

Accordingly, in order to avoid a potential conflict between section 17(a) and section 545, the bill proposes deletion of section 17(a). The section may already be ineffective under present law, because the prohibition of springing interests was enacted in the 1930's, after the enactment of section 17(a). The amendment proposed would conform the two laws and delete what may already be deadwood.

Section 324

This section makes a conforming change in section 213 of the Transportation Act, 1920, by changing "bankruptcy" to "case under title 11 of the United States Code."

Section 325

This section amends section 7 of the Act entitled "An Act to provide conditions for the purchase of supplies and the making of contracts

by the United States, and for other purposes", approved June 30, 1936 (49 Stat. 2036; 41 U.S.C. 41). The reference to trustees in bankruptcy is changed to read trustees in cases under title 11 of the United States Code.

Section 326

This section repeals section 733(g) of the Public Health Service Act, which excepts from discharge for a period of five years certain educational loans. This exception to discharge is found in section 523 (a)(8) of the proposed bankruptcy code.

Section 327

This section amends section 503 of the Housing Act of 1949, entitled "Potentially adequate farms," to make a nonassignability provision inapplicable in cases under proposed title 11.

Section 328

This section changes a reference in section 701 of the Civil Rights Act of 1964 from trustee in bankruptcy to trustee in a case under title 11 of the United States Code.

Section 329

This section changes a reference in section 802 of the Act entitled "An Act to prescribe penalties for certain acts of violence or intimidation, and for other purposes", approved April 11, 1968 (82 Stat. 81; 42 U.S.C. 3602(d)), from trustee in bankruptcy to trustee in a case under title 11 of the United States Code.

Section 330

Section 17 of the Boulder Canyon Project Act provides for superpriority for claims of the United States arising out of any contract authorized by that Act. Section 331 of the bill makes the priority inapplicable in cases under title 11 of the United States Code, in conformity with the amendment to section 3466 of the Revised Statutes (section 321(a) of the bill) and the general bankruptcy policy against special priorities for the Government.

Section 331

This section adds a new section to Title IX of the Merchant Marine Act, 1936. The provision added is presently Chapter XIV of the Bankruptcy Act. It does not govern bankruptcy proceedings, and is more properly placed in the Merchant Marine Act than in proposed title 11 of the United States Code. It is inserted with only minor stylistic changes from present law.

Section 332

This section makes a change in section 22(b) of the Organic Act of Guam. It changes a cross-reference to the Rules of Bankruptcy Procedure to conform it to the present enabling provision in title 28 governing the rules.

Section 333

This section makes the same changes in section 25 of the Revised Organic Act of the Virgin Islands as section 332 of the bill makes in the Organic Act of Guam.

Section 334

This section makes three amendments to the Interstate Commerce Act. The amendments are conforming amendments, changing references in sections 20c, 213(a)(3), and 323 of that Act to bankruptcy to references to title 11 of the United States Code.

TITLE IV—TRANSITION

Section 401; repealer

Section 401 provides for the repeal of the existing Bankruptcy Act and all relevant provisions of other laws amending the Bankruptcy Act.

Section 402; effective date of new act; incumbents

Subsection (a) of section 402 makes all provisions of this act effective October 1, 1979.

Subsection (b) authorizes the completion of their regular terms of office by referees in bankruptcy serving on the date of the enactment of the act. Subsection (b) extends through September 30, 1982, the term of office of any referee in bankruptcy which would otherwise expire before that date, unless the incumbent is found unqualified by a merit screening committee established pursuant to section 402(c).

Subsection (c) establishes for each State a merit screening committee to evaluate the qualifications of each incumbent referee in bankruptcy to serve during the extended transition term prescribed in the proviso to subsection (b) of this section. Each State screening committee is to be constituted and organized as specified in subsection (c) prior to the expiration of the term of any referee in bankruptcy serving in that State whose term was extended as provided by subsection (b). Merit screening is not required on the part of a bankruptcy judge serving the balance of the regular term for which he was appointed prior to the enactment of this act.

Subsection (d) authorizes an incumbent referee in bankruptcy, upon the expiration of a regular or an extended term of office, to continue to serve until a successor is appointed and qualified as provided in section 201 of the act. This provision safeguards against possible delays in the replacement of bankruptcy judges in service at the end of the transition period.

Subsection (e) confers upon each referee in bankruptcy serving on the date of the enactment of this act, the title of bankruptcy judge and vests in him all of the rights and powers vested in a bankruptcy judge appointed under section 201 of the act. Therefore, the broadened jurisdiction conferred by 28 U.S.C. § 1334, as amended by section 216 of this act, is exercisable by incumbent bankruptcy judges serving on and after the date of the enactment of this act, except to the extent such exercise would be inconsistent with the provisions of section 403 of this act.

Section 403. Saving provisions

Subsection (a) makes it clear that the provisions of this act are not to affect cases commenced under prior law, which are to proceed, with respect to both substantive and procedural matters, in the same fashion as though this act were not in effect. Fiduciaries serving in cases pend-

ing on the date of the enactment of this act are permitted to continue in office.

Subsection (b) preserves the rights of incumbent referees in bankruptcy and their survivors to whatever pension and survivor benefits may have accrued before the repeal of section 40(d) of the Bankruptcy Act, by section 401 of this act.

Notwithstanding section 313 of this act, section 403(c) provides for the continuing application of chapters 9 and 96 and sections 2516, 3057, and 3284 of title 18, United States Code, to the act of any person committed before October 1, 1979, or in connection with a case commenced before that date.

Subsection (d) empowers the bankruptcy judge in a case confirmed after enactment, to reduce a fee in excess of $100,000 charged under section 40c(2)(b) of the Bankruptcy Act, as the interests of justice may require. It is elsewhere provided (section 404(b)) that fees assessed following the effective date of this act are not to exceed $100,000 in any one chapter XI case.

Section 404. Rules of bankruptcy procedures; fees and charges

Under subsection (a), rules of bankruptcy procedure in force on September 30, 1979, unless inconsistent with this act, are continued in effect during the transition period until either repealed or superseded pursuant to 28 U.S.C. section 2075, as amended by section 221 of this act.

Subsection (b) continues the fees and charges in effect on October 1, 1979, pending the promulgation of new fees and charges in accordance with 28 U.S.C. § 1930. The fees chargeable in any one case may not exceed $100,000.

Section 405. Transition study

Section 405 requires the Director of the Administrative Office of the U.S. Courts (1) to complete a study to determine the number of bankruptcy judges needed to implement the provisions of this act and (2) to report the results of that study to the Congress and to the Judicial Conference before July 1, 1982.

The transition period prescribed by section 402 (a) and (b) is necessary in view of the time required to acquire meaningful empirical data under the vastly enlarged jurisdiction and altered structure of the new bankruptcy court.

The broadened jurisdiction and powers of the new bankruptcy courts pertain only to cases commenced after October 1, 1979. The transition study report by the Director is to be made to the Judicial Conference by July 1, 1982. The committee feels a 3-year transition period should be sufficient to enable the Director to conduct a meaningful survey on which to base his report to the Congress. However, the committee also recognizes the magnitude and importance of the survey may dictate that the Director require more time to assemble and evaluate decisive data in which case the committee expects the Director to notify the Congress of his needs and request a suitable extension.

The provisions of section 405 are to be read with section 153(b) of this act, which vests in the Judicial Conference of the United States the power to determine the number of bankruptcy courts and their locations.

Since implementation of the approved changes may be infeasible within the allotted time, section 402(d), authorizing bankruptcy judges serving on September 30, 1982, to continue to serve until their successors are appointed and qualified, permits the bankruptcy courts to continue to function under the direction of incumbent transition bankruptcy judges until the numbers and locations of bankruptcy court judgeships can be established under this section.

ESTIMATED COSTS

Cost estimates were prepared for the bill in May 1978 by the Administrative Office of the United States Courts and on July 13, 1978, by the Congressional Budget Office.

The cost estimate by the Administrative Office compared the costs for S. 2266 and the analogous House bill, H.R. 8200, and it is attached as appendix I. It shows that S. 2266 would cost, annually, approximately $62.8 million more than current costs.

The cost estimate of the Congressional Budget Office for S. 2266 which follows indicates an approximate annual increase of $14 million per year beginning in fiscal year 1980. This is substantially less than the $62.8 million annual increase estimated for H.R. 8200.

CONGRESSIONAL BUDGET OFFICE,
U.S. CONGRESS,
Washington, D.C., July 13, 1978.

Hon. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary, U.S. Senate, Dirksen Senate Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the attached cost estimate for S. 2266, a bill to establish a uniform law on the subject of bankruptcies.

Should the committee so desire, we would be pleased to provide further details on the attached cost estimate.

Sincerely,

ALICE M. RIVLIN,
Director.

CONGRESSIONAL BUDGET OFFICE—COST ESTIMATE

JULY 13, 1978.

1. Bill number: S. 2266.
2. Bill title: A bill to establish a uniform law on the subject of bankruptcies.
3. Bill status: As ordered reported by the Senate Committee on the Judiciary, July 12, 1978.
4. Bill purpose: The purpose of this bill is to establish a modern uniform law on the subject of bankruptcies. The bill provides for substantive changes in the current bankruptcy law and in judicial administration of the law. The jurisdiction of the district court is expanded to include all bankruptcy cases commenced under Title 11 of the U.S. Code, and bankruptcy judges may exercise all powers and jurisdiction conferred on the district courts.

The bill authorizes the appointment of additional personnel for the bankruptcy courts and it requires that the Director of the Administrative Office of the U.S. Courts conduct continuing studies to determine the number of additional judgeships which may be required to provide expeditious administration of the revised bankruptcy law. The Director is also to name qualified persons eligible to membership on the panel of trustees for each bankruptcy court.

The bill also increases bankruptcy court filing fees from the current $50 to $60 per filing.

5. Cost estimate:

	Millions
Fiscal year 1979: Estimated cost	$0.2
Fiscal year 1980: Estimated cost	14.1
Fiscal year 1981: Estimated cost	14.2
Fiscal year 1982: Estimated cost	15.1
Fiscal year 1983: Estimated cost	16.0

The costs of this bill fall within budget function 750.

6. Basis of estimate: Based on information from the Administrative Office of the U.S. Courts, the expansion of the jurisdiction of the district courts is expected to result in bringing before bankruptcy courts approximately 6,000 to 8,000 plenary actions previously adjudicated in state courts. Based on current workload statistics, approximately 20 additional bankruptcy judges will be required to handle the increased caseload. However, the final number of additional judgeships will ultimately be dependent upon further analysis by the Administrative Office of the U.S. Courts of the types of plenary proceedings which will be brought into the district courts.

Assuming 20 additional judgeships will be needed, the fiscal year 1980 cost is estimated to be $2.8 million. This includes lump-sum costs for space, facilities, furnishings, fixtures, and recurring costs for each judge's salary, benefits, expenses, and supporting staff.

This bill requires that records be maintained of proceedings in bankruptcy courts. It is estimated that implementation of this requirement will require approximately 123 court reporters to be employed by the bankruptcy courts. This is based on one court reporter position for each two full-time bankruptcy judges. Costs for salaries benefits and overhead for these positions are estimated to be $3.5 million in fiscal year 1980.

This estimate also includes the cost of one law clerk per bankruptcy judge to provide him with the necessary research and legal assistance to fulfill the responsibilities under this bill. The cost for salaries, benefits and overhead for 246 law clerks is estimated to be $7.3 million in fiscal year 1980.

The Administrative Office of the U.S. Courts will require additional staff to perform several functions necessitated by this bill. First, a staff of three attorneys along with two clerks will be needed to prepare the transitional study to be transmitted to the Congress in 1982, as required by this bill. Second, a staff of three attorneys and two clerks will be needed to establish and maintain information on persons qualified for membership on the panel of trustees for each district court. These positions will have to be established during fiscal year 1979 in order to have trustee panels in operation by the effective date of this bill, October 1, 1979.

In addition, as a function of maintaining the panel of trustees, additional staff is estimated to be required to review and audit the work performed by trustees in each district court and to maintain information and statistics on the trustees. The fiscal year 1979 cost is estimated to be approximately $200,000. Costs are estimated to be approximately $500,000 for each of fiscal years 1980, 1981 and 1982, with a slight drop in costs in fiscal year 1983 after the transitional study is completed.

This bill has an effective date of October 1, 1979. All costs are estimated to begin in fiscal year 1980, with the exception referred to above.

All costs are inflated through fiscal year 1983 based on CBO projections of federal salary increases and the cost of federal purchases or services.

7. Estimate comparison: None.

8. Previous CBO estimate: On September 6, 1977, CBO prepared an estimate on H.R. 8200, the corresponding bill reported by the House Committee on the Judiciary, July 19, 1977. The estimated cost of S. 2266 is lower, primarily because it does not provide for a complete upgrading of the status of bankruptcy courts and because H.R. 8200 contains several provisions which are not in S. 2266.

9. Estimate prepared by: Thomas J. Elzey.

10. Estimate approved by:

C. J. Nuckols,

(For James L. Blum, Assistant Director for Budget Analysis).

APPENDIX I

Cost Estimates for Proposed Bankruptcy Legislation Prepared by the Administrative Office of the United States Courts

GENERAL

The following estimates reflect the differences between current costs of the bankruptcy system and the proposed legislation: S. 2266, S. 2266—with modifications proposed by the Judicial Conference, and H.R. 8200.

(*a*) *S. 2266.*—Cost differences between this proposal and the current law includes the addition of a court reporter for each two bankruptcy judges, liberalized retirement benefits for the bankruptcy judge, and 20 additional bankruptcy judges to handle increased workload created by an estimated 8,000 plenary actions.

(*b*) *S. 2266—modified.*—This proposal differs from S. 2266 by the addition of bankruptcy administrators and their staff. No provision has been made for additional referees above the current level based on the assumption that the addition of bankruptcy administrators will assume some of the administrative workload and offset some of the added workload created by the 8,000 plenary actions.

(*c*) *H.R. 8200.*—This proposed legislation would upgrade the status and salary of referees in bankruptcy to that Article III judges. Each bankruptcy judge would be authorized a law clerk, secretary, court reporter and courtroom deputy. In addition, separate bankruptcy courts would be established, requiring additional supporting personnel and reclassification of some positions. The bill also creates the office of the U.S. Trustees and staff who would be supervised by an Assistant Attorney General. This cost estimate is based on the assumption of a reduction from the current level to 200 full-time bankruptcy judges.

There are 214 full-time and 24 part-time bankruptcy judgeships authorized at this time. The 24 part-time referees currently authorized are working half-time and for purpose of cost estimates, therefore, represent the equivalent of 12 full-time positions.

The attached statements describe in some detail the budgetary impact of each bill on current expenditures. In addition to these statements, an object classification statement compares current costs by major object class with each proposed bill and a personnel summary statement compares current numbers of personnel and total salaries by each major category of position with each bill. Estimated costs by State based on numbers of bankruptcy referees are also provided. All estimates are based on the current level of bankruptcy filings with the exception of 8,000 plenary actions. Costs are also based on current salary rates and without taking into consideration inflation or other possible cost increases.

COMPARATIVE COST BY OBJECT CLASS

[In thousands of dollars]

	Current	S. 2266	S. 2266 (modified)	H.R. 8200
Personnel compensation [1]	$27,295	$31,534	$37,409	$54,438
Personnel benefits	6,399	8,228	9,538	16,428
Travel and transportation of persons	484	615	893	1,470
Transportation of things	2	2	2	2
Space and facilities:				
Standard level user charges	5,269	5,799	6,651	12,809
Space renovations				[2] 85,000
Communications, utilities, and other rent	2,771	2,998	3,189	3,346
Printing and reproduction	407	449	506	537
Security investigations:				
Nonrecurring		[2] 80	[3] 440	[2] 970
Recurring	20	20	20	20
Other services	197	725	770	294
Supplies and materials	565	639	762	825
Equipment:				
General office, initial		[2] 252	[2] 262	[2] 1,961
Lawbooks:				
Initial		[2] 221	[2] 171	[2] 6,000
Recurring	141	(154)	(141)	(1,200)
Furniture and furnishings:				
Initial		[2] 841	[2] 1,500	[2] 5,273
Recurring	223	(247)	(299)	(546)
Cost of general administration:				
Administrative Office of the U.S. Courts (Administrative Support Services)	1,000	1,040	1,081	1,081
Federal Judicial Center (education and training)	129	242	292	433
Assistant Attorney General (supervising U.S. Trustees)				[3] 473
Budgetary impact:				
1st yr		53,675	63,486	191,360
Succeeding years	44,902	52,682	61,553	93,887
Change in revenue:				
Loss (+)				[4] 14,000
Gain (−)		[5] −120	[5] −120	[5] −120
Total cost:				
1st yr		53,555	63,366	205,240
Succeeding years	44,902	52,562	61,433	107,767

[1] Personnel compensation takes into account normal lapses (savings due to vacancies).
[2] Nonrecurring expenses.
[3] Includes nonrecurring of $15,000 for security investigations.
[4] Revenue loss due to elimination of contributions to referee salary and expense fund from net proceeds realized from liquidations and reorganizations.
[5] A $15 filing fee will be received for each of the estimated 8,000 plenary actions.

PERSONNEL SUMMsRY [1]

[Dollar, amounts in thousands]

	Current		S. 2266		S. 2266 (modified)		H.R. 8200	
	Number of postiions	Total salaries	Number of positions	Total salaries	Number of positions	Total salaries	Number of positions	Total salaries
Bankruptcy judges:								
Full time	214	$10,379	246	$11,883	226	$10,961	200	$10,900
Part time (equivalent full-time positions)	12	582						
Personal staff:								
Secretaries	226	3,088	246	3,347	226	3,088	200	3,324
Law clerks							200	4,158
Court reporters			123	2,730	113	2,519	200	4,434
Courtroom deputies							200	3,652
Cleircal staff	1,097	13,246	1,112	13,574	1,097	13,246		
Bankruptcy administrators:								
Bankruptcy administrators					164	5,667		
Staff					164	1,928		
U.S. trustees:								
Trustees							188	5,980
Staff							470	6,259
Clerk of the bankruptcy court:								
Clerks							94	3,508
Staff							871	12,323
Total	1,549	27,295	1,727	31,534	1,990	37,509	2,623	[1] 54,438

[1] Excluding personnel in the Administrative Office of the U.S. Courts, the Federal Judicial Center, and the Department of Justice.

S. 2266—BUDGETARY IMPACT

Increase	Permanent positions	Amount (thousands)
1. Bankruptcy judges—S. 2266 will result in an estimated 8,000 plenary actions to be handled by bankruptcy judges. The increased workload will require 20 additional bankruptcy judges over the current equivalent of 226 full-time positions (214 full-time and 24 part-time positions):		
Personnel compensation	20	$922
Personnel benefits		93
Unfunded cost of retirement		120
Secretaries:		
Personnel compensation	20	259
Personnel benefits		26
Unfunded cost of retirement		35
2. Court reporters—An average of 1 court reporter will be required for each 2 bankruptcy judges:		
Personnel compensation	123	2,730
Personnel benefits		273
Unfunded cost of retirement		366
3. Chief deputy clerks—Deconsolidation of clerk's offices requires addition of middle level management personnel:		
Personnel compensation	15	328
Personnel benefits		33
Unfunded cost of retirement		44
4. Liberalized retirement benefits for 246 bankruptcy judges		839
5. Travel and miscellaneous:		
Bankruptcy judges and staff		148
Court reporters		320
Chief deputy clerks		24
6. Security investigations for 32 bankruptcy judges		[1] 80
7. Contractual services for court reporters for those locations where full-time reporters are not available		500
8. New libraries for 32 bankruptcy judges		[1] 80
Annual cost of maintaining libraries		(13)
9. General office equipment:		
Bankruptcy judges and staff (32)		[1] 240
Chief deputy clerks (15)		[1] 12
10. Space rental:		
Bankruptcy judges and staff (20)		306
Court reporters (123)		200
Chief deputy clerks (15)		24
11. Furniture and furnishings:		
New personnel:		
Bankruptcy judges (32)		[1] 480
Court reporters (123)		[1] 123
Chief deputy clerks (15)		[1] 15
Recurring requirements:		
Bankruptcy judges and staff (20)		(10)
Court reporters and chief deputy clerks		(14)
12. General administration:		
Federal Judicial Center (education and training)		115
Administrative Office of the U.S. Courts (Administrative Support Services)	2	40
13. Revenue gain (represents filing fees of $15 for 8,000 plenary actions)		−120
Budgetary impact:		
1st yr	180	8,653
Succeeding years	180	7,660

[1] Nonrecurring expenses.

Note: All amounts included for salaries and benefits of new personnel take into account normal lapses (savings due to vacancies) of 5 percent.

In addition to the 20 additional bankruptcy judges required for plenary actions, it is anticipated that the 24 part-time judges will be replaced by 12 full-time bankruptcy judges.

S. 2266—MODIFIED BUDGETARY IMPACT

Increase	Permanent positions	Amount (thousands)
1. Court reporters—an average of 1 court reporter will be required for each 2 referees:		
Personnel compensation	113	$2,519
Personnel benefits		252
Unfunded cost of retirement		338
2. Bankruptcy administrators—S. 2266 (modified) provides for the establishment of the Office of Bankruptcy Administrator:		
Personnel compensation	164	5,667
Personnel benefits		566
Unfunded cost of retirement		759
Secretaries to bankruptcy administrators:		
Personnel compensation	164	1,928
Personnel benefits		193
Unfunded cost of retirement		259
3. Liberalized retirement benefits for 226 referees in bankruptcy		772
4. Travel and miscellaneous expenses:		
Court reporters		294
Bankruptcy administrators and staff		902
5. Security investigations:		
Referees in bankruptcy (12)		[1] 30
Bankruptcy administrators (164)		[1] 410
6. Contractual service for court reporters for those locations where full-time reporters are not available		500
7. New libraries for 21 referees in bankruptcy		[1] 30
Annual cost of maintaining libraries		----
8. General office equipment: Bankruptcy administrators and staff (328)		[1] 262
9. Space rental:		
Court reporters (113)		184
Bankruptcy administrators and staff (328)		1,198
10. Furniture and furnishings:		
New personnel:		
Referees in bankruptcy (12)		[1] 180
Court reporters (113)		[1] 113
Bankruptcy administrators and staff (328)		----
Recurring requirements:		
Referees in bankruptcy and staff		(11)
Court reporters		(65)
Bankruptcy administrators and staff		
11. General administration:		
Federal Judicial Center (education and training)		163
Administrative Office of the U.S. Courts (Administrative Support Services)	4	81
12. Revenue gain (represents filing fees of $15 for 8,000 plenary actions)		−120
Budgetary impact:		
1st yr	455	18,464
Annual recurring	445	16,531

[1] Nonrecurring expenses.

Note: Although S. 2266 (modified) will result in additional plenary actions, it is believed that the number of referees in bankruptcy will remain the same as currently (226) because the bankruptcy administrators will assume some of the present administrative workload of the referees. All amounts included for salaries and benefits of new personnel take into account normal lapses (savings due to vacancies) of 5 percent. It is anticipated under S. 2266 (modified) that the 24 part-time referees will be replaced by 12 full-time referees.

H.R. 8200—BUDGETARY IMPACT

Increase [1]	Permanent positions	Amount (thousands)
1. Salary adjustment for bankruptcy judges. H.R. 8200 raises bankruptcy referees to art. III judges with salaries increasing from $48,500 to $54,500		$1,200
2. Life tenure, noncontributing retirement system increase in cost over the present civil service retirement system and other personnel benefits		3,519
3. Participation in judicial survivors' annuities system with agency contributions at 4½ percent		491
4. Additional staff for bankruptcy judges:		
Law clerk, JSP-12:		
Personnel compensation	200	4,158
Personnel benefits		416
Unfunded cost of retirement		558
Court reporters, ungraded:		
Personnel compensation	200	4,434
Personnel benefits		444
Unfunded cost of retirement		594
Reclassification of secretaries from JSP-8 to JSP-10 and courtroom deputies from JSP-6 to JSP-11		2,496
5. U.S. trustees and staff: The cost is based on 94 U.S. trustees, 94 assistant trustees with a staff of 2 secretaries and 3 clerks for each office.		
Personnel compensation	658	12,238
Personnel benefits		1,225
Unfunded cost of retirement		1,641
6. The clerical staff of the bankruptcy court will be upgraded with grade levels of the clerk and his chief deputy commensurate with those of district courts and an additional position for middle level management.		
Personnel compensation	94	4,995
Personnel benefits		500
Unfunded cost of retirement		669
7. Travel and miscellaneous:		
Judges and staff		974
U.S. trustee and staff		724
Clerical staff		350
8. Security investigations:		
Judges (200)		[3] 500
U.S. trustees and assistant trustees (188)		[3] 470
9. New libraries for 200 bankruptcy judges		[3] 5,859
Annual cost of maintaining libraries		(1,059)
10. General office equipment:		
Bankruptcy judges and staff (200)		[3] 1,360
U.S. trustees and staff (658)		[3] 526
Clerks of bankruptcy court (94)		[3] 75
11. Space rental:		
Bankruptcy judges and staff (1,000)		5,403
U.S. trustees and staff (658)		1,603
Clerks of bankruptcy court (965)		534
Space renovations		[3] 85,000
12. Furniture and furnishings:		
New personnel:		
Bankruptcy judges and taff (1,000)		[3] 3,264
U.S. trustees and staff (658)		[3] 1,222
Clerks of bankruptcy court (965)		[3] 564
Recurring requirements:		
Bankruptcy judges and staff (1,000)		(224)
U.S. trustees and staff (658)		(85)
Clerks of bankruptcy court (965)		(14)
13. General administration:		
Assistant Attorney General (supervising U.S. trustees)	10	[4] 473
Administrative Office of the U.S. Courts (Administrative Support Services)	4	81
Federal Judicial Center (education and training)		304
Less—		
14 full-time and the equivalent of 24 part-time referees	−26	−1,261
52 secretaries and clerical assistants	−52	−644
Benefits (funded and unfunded cost)		−501
Revenue loss [5]		14,000
Revenue gain		−120
Budgetary impact:		
1st yrs	1,088	160,338
Succeeding yr	1,088	62,865

[1] The cost estimate for H.R. 8200 is based on 200 judges.
[2] All amounts included for salaries and benefits of new personnel takes into account normal lapses (savings due to vacancies) of 5 percent.
[3] Nonrecurring expenses.
[4] Includes nonrecurring of $15,000 for security investigations.
[5] Revenue loss due to elimination of contributions to referee salary and expense fund from net proceeds realized from liquidations and reorganizations.

PROPOSED BANKRUPTCY LEGISLATION—COMPARATIVE COST BY STATE[1]

[Dollar amounts in thousands]

	Current cost	S. 2266		S. 2266 (modified)		H.R. 8200	
		1st yr cost	Annual recurring	1st yr cost	Annual recurring	1st yr cost	Annual recurring
Total	$44,902	$53,555	$52,562	$63,366	$61,433	$205,240	$107,767
District of Columbia circuit: District of Columbia	199	216	214	280	272	.....	.....
1st circuit:							
Maine	397	435	427	561	544	2,052	1,078
Massachusetts	795	1,088	1,068	1,122	1,086	4,105	2,155
New Hampshire	99	218	214	140	136	.....	.....
Rhode Island	199	218	214	280	272	1,026	539
Puerto Rico	397	218	214	561	544	1,026	539
2d circuit:							
Connecticut	397	435	437	561	544	2,052	1,078
New York	3,577	4,789	4,701	5,047	4,892	15,394	8,082
Vermont	99	218	214	140	136	1,026	539
3d circuit:							
Delaware	99	218	214	140	136	.....	.....
New Jersey	994	1,306	1,282	1,402	1,359	5,131	2,694
Pennsylvania	1,590	1,959	1,923	2,243	2,175	6,157	3,233
Virgin Islands	99	.....	.....	140	136	.....	.....
4th circuit:							
Maryland	298	435	427	420	408	2,052	1,078
North Carolina	795	1,089	1,068	1,122	1,087	3,079	1,616
South Carolina	199	218	214	280	272	1,026	539
Virginia	993	1,524	1,496	1,402	1,359	5,132	2,694
West Virginia	397	435	427	561	544	2,052	1,078
5th circuit:							
Alabama	1,788	1,524	1,496	2,523	2,447	6,157	3,233
Florida	1,19$	1,959	1,923	1,682	1,631	6,157	3,233
Georgia	1,391	1,742	1,709	1,963	1,903	7,183	3,772
Louisiana	497	871	854	701	680	3,079	1,616
Mississippi	695	653	641	981	951	3,079	1,616
Texas	1,788	2,830	2,778	2,524	2,446	9,236	4,850
Canal Zone	.....	.....	.....	.....	.....	.....	.....
6th circuit:							
Kentucky	596	653	641	841	815	3,079	1,616
Michigan	1,391	1,524	1,496	1,963	1,903	5,131	2,694
Ohio	2,980	3,266	3,205	4,205	4,077	13,340	7,005
Tennessee	1,391	1,306	1,282	1,963	1,903	5,131	2,695
7th circuit:							
Illinois	2,285	2,613	2,564	3,225	3,126	10,262	5,389
Indiana	1,192	1,524	1,496	1,682	1,631	5,131	2,694
Wisconsin	894	1,088	1,068	1,262	1,223	4,105	2,155
8th circuit:							
Arkansas	397	435	427	561	544	2,052	1,078
Iowa	397	435	427	561	544	2,052	1,078
Minnesota	894	1,306	1,282	1,262	1,223	5,132	2,693
Missouri	1,193	871	854	1,683	1,630	4,105	2,155
Nebraska	199	218	214	280	272	1,026	539
North Dakota	199	218	214	280	272	1,026	539
South Dakota	99	218	214	140	136	1,026	539
9th circuit:							
Alaska	199	218	214	280	272	1,026	539
Arizona	795	871	854	1,122	1,087	4,105	2,155
California	5,165	5,878	5,769	7,290	7,068	23,603	12,393
Hawaii	199	218	214	280	272	1,026	539
Idaho	199	218	214	280	272	1,026	539
Montana	199	435	427	280	272	1,026	539
Nevada	397	435	427	561	544	2,052	1,078
Oregon	894	871	854	1,262	1,223	4,105	2,155
Washington	993	1,088	1,069	1,402	1,358	5,131	2,694
Guam	.....	.....	.....	.....	.....	.....	.....
10th circuit:							
Colorado	794	871	854	1,122	1,087	4,105	2,156
Kansas	596	653	641	841	816	3,079	1,616
New Mexico	199	435	427	280	272	1,026	539
Oklahoma	794	653	641	1,122	1,087	3,079	1,616
Utah	199	218	214	280	272	1,026	539
Wyoming	199	218	214	280	272	1,026	539

[1] Represents estimates based on average unit cost of establishing or maintaining each bankruptcy referee (judge) position.

Changes In Existing Laws

In the opinion of the Committee on the Judiciary, it is necessary in order to expedite the business of the Senate to dispense with the requirements of subsection 4 of rule XXIX of the Standing Rules of the Senate (relating to the showing of changes in existing laws made by the bill, as reported). The Committee felt this was justified since the Committee on Finance has a 30-day sequential referral following the date the bill is reported from the Judiciary Committee and further changes could be expected from the Committee on Finance. It is anticipated that completed changes in the existing law section will be available following termination of the referral to the Committee on Finance.

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Calendar No. 919

95TH CONGRESS
2d Session

SENATE

REPORT
No. 95-990

INTERNATIONAL ENVIRONMENTAL ASSESSMENT

JULY 17 (legislative day, MAY 17), 1978.—Ordered to be printed

Mr. SPARKMAN, from the Committee on Foreign Relations, submitted the following

REPORT

[To accompany S. Res. 49]

The Committee on Foreign Relations, to which was referred the resolution (S. Res. 49) expressing the sense of the Senate that the U.S. Government should seek the agreement of other governments to a proposed treaty requiring the preparation of an International Environmental Assessment for any major project, action, or continuing activity which may be reasonably expected to have a significant adverse effect on the physical environment or environmental interests of another nation or a global commons area, having considered the same, reports favorably thereon with an amendment to the text and an amendment to the title and recommends that the resolution as amended do pass.

PURPOSE

The purpose of this resolution is to make nations aware and responsive to the adverse transboundary environmental effects of activities occurring within their territory. With this goal in mind, the resolution calls for the negotiation of a treaty which would require nations to prepare an environmental assessment of any activity which could reasonably be expected to have a significant harmful impact on the physical environment of another nation or a global commons area.

BACKGROUND

On January 24, 1977, Senate Resolution 49 was introduced by Senator Pell. The following is an excerpt from his introductory statement which explains the need for international agreement in this area.

> Last December 10 (1976), the United Nations General Assembly approved by a 96-to-8 vote—with 30 abstentions—a draft treaty to ban the use of environmental modification techniques in warfare. This development is a great source of

satifaction to me, as this treaty appears to have come about as a result of Senate Resolution 281, including a draft treaty, which I introduced in 1972. That resolution was endorsed unanimously by the North Atlantic Assembly on November 21, 1972, and, after being reintroduced as Senate Resolution 71, passed the Senate on July 11, 1973, by a vote of 82 to 10. With the entry into force of that treaty, a major step forward will have been taken to insure that the emerging sciences of environmental modification will be used solely for peaceful purposes to benefit mankind. But the dedication of most of the nations of the world to peaceful uses of environmental modification techniques—weather and climate modification for example—by itself will not insure that such techniques will be employed in such a way as not to cause harm to or even wreak devastation on another nation or on a global commons area as the oceans even if there is no aggressive military motive involved.

Similarly, and perhaps more important, large-scale economic projects—for example, dams, canals, nuclear reactors, waste disposal systems, and the clearing of virgin jungle and tropical rain forest land for agricultural development—could have unintended or unforeseen effects of a significant nature beyond the borders of the countries in which these projects are being conducted. In the most extreme case, a nation may adopt a self-serving policy and undertake a project of nonmilitary purposes knowing full well that it could have disastrous environmental consequences for a neighboring country.

That is why I am introducing today a Senate resolution calling upon the President to take the initiative in proposing multilateral negotiations on a treaty which would require the preparation of an international environmental impact statement for any activity which may reasonably by expected to have a significant effect on the environment of other nations or a global commons area.

It should also be noted that the 23d Meeting of the North Atlantic Assembly (September 1977) adopted a resolution urging its member governments "to begin the process of negotiating a treaty requiring the preparation of an international environmental analysis for any major project, action, or continuing activity which may be reasonably expected to have a significant adverse effect on the physical environmental interests of another nation or a global commons area." This action indicates that the nations of the North Atlantic Alliance are willing to negotiate an agreement similar to that proposed by Senate Resolution 49.

Administration Position

During hearings conducted by the Subcommittee on Arms Control, Oceans and International Environment on March 31, 1977, the State Department indicated that it was in "full agreement with the basic purpose of Senate Resolution 49" to seek responsible assessment of nations of the environmental effects of their action upon other nations. However, the Department was of the opinion that most countries

would look upon the proposed treaty contained in the original resolution as a restraint on national sovereignty. Revision to remove the objectionable provisions were drafted and subsequently approved by the Committee.

On May 18, 1978, the administration and private witnesses provided testimony on Senate Resolution 49. All witnesses agreed that the negotiations proposed by this resolution are desirable and that the draft treaty contained in the resolution, as revised, was a good basis on which to begin to prepare for such negotiations.

The following excerpt from the testimony of Hon. Robert C. Brewster, Acting Assistant Secretary of State for Oceans and International Environmental and Scientific Affairs illustrates the administration's position on this resolution.

The need for international environmental assessments

The number of environmental problems is increasing and their impact becoming more widespread. This trend is clearly evident in the problems of environmental degradation we encounter within specific nations as well as those in the oceans, weather systems, and the global atmosphere.

Most countries are becoming increasingly aware of the pollution threats to their air, water, and land. These problems are far from peculiar only to industrialized countries. Developing countries are also increasingly experiencing some of the same environmental degradation as the more industrial states. They too are finding that poverty and headlong urbanization spawn their own distinct forms of environmental deterioration. As nations come to appreciate the similarity in their localized environmental problems, as they see these problems cross national frontiers, and as they identify global environmental problems they are recognizing the benefits which can be gained through regional and even global approaches to environmental improvement.

As we become aware of the common stake we have in managing the Earth's air, water and land resources we are coming to appreciate more fully the interdependence and collective responsibility we share in protecting and enhancing the environment and in managing these resources properly.

One of the first steps we face in devising a strategy to identify and solve our international environmental problems is the need to learn more about the natural systems, and how they are affected by, and in turn affect, man's activities.

It is also clear to us that environmental problems can originate both from uncertainties about scientific fact and from differences in social values. Consequently, the policies and programs needed to deal with international and global problems require both specialized scientific knowledge and sound social judgment. In this area both the informed citizen and the technical expert can make a distinct contribution to the preservation of environmental quality.

I believe the proposal you have set before us in Senate Resolution 49 combines a recognition of international interdependence and collective responsibility with a means to bring together the scientific knowledge and social values

required to identify and deal with international environmental problems. As such I consider it a substantial and positive proposal.

MAJOR PROVISIONS

The operative clause of Senate Resoultion 49, as amended, urges the United States to seek the agreement of other nations to negotiate a treaty requiring the preparation of international evironmental assessments for any major project, action or continuing activity within its territory or in a global commons area which could reasonably be expected to have a significant adverse effect on the environment of another nation or a global commons area.

The following is a summary of the major provisions of the draft treaty proposed by Senate Resolution 49.

This treaty:

Provides that no country party to this treaty nor nongovernmental entity within such country will undertake a major project which may have a significant adverse effect on the environment of another nation or global commons area unless it first files an International Environmental Assessment with the United Nations Environment Program (UNEP).

Requires, upon request, that parties undertaking major projects consult with the affected party or parties or in the case of a global commons area, with the UNEP, in order to prevent or minimize any potential adverse transboundary environmental effects.

Requires nations, upon request, to refrain for not more than 90 days for initiating a project or activity which might have adverse transboundary environmental effects in order to permit consultations. This 90-day waiting period may be waived for good reason by the party initiating the project or activity.

Imposes a responsibility for a good faith effort to settle disputes concerning the interpretation or application of this treaty.

Calls for an international conference 5 years after the treaty enters into force to review the operations of the agreement and to consider the need for developing procedures for the assessment of liability regarding state responsibility for damage to the environment of other states or areas beyond national jurisdiction.

COMMITTEE ACTION AND COMMENTS

The Subcommittee on Arms Control, Oceans and International Environment held a public hearing on Senate Resolution 49 on March 31, 1977. At that time the Subcommittee heard testimony from the following individuals.

Hon. Patsy Mink, Assistant Secretary of State for Oceans and International Environmental and Scientific Affairs.

Hon. Barbara D. Blum, Deputy Administrator, Environmental Protection Agency.

Hon. Charles Warren, Chairman, Council on Environmental Quality.

Mr. Richard A. Frank, Acting Director, Center for Law and Social Policy, Washington, D.C.

After drafting revision of the text of Senate Resolution 49, additional hearings were held on May 18, 1978. The following is a list of the individuals testifying at that hearing:

Hon. Robert C. Brewster, Acting Assistant Secretary, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State;

Hon. Charles Warren, Chairman, Council on Environmental Quality;

Alice Brandeis Popkin, Associate Administrator, Office of International all Activities, Environmental Protection Agency;

Eldon V. C. Greenberg, General Counsel, National Oceanic and Atmospheric Administration, Department of Commerce;

Thomas B. Stoel, Director of International Projects, Natural Resources Defense Council, Washington, D.C.; and

Leonard Meeker, Director of International Projects, Center for Law and Social Policy, Washington, D.C.

On July 11, 1978, the Committee on Foreign Relations met and by a voice vote ordered Senate Resolution 49, as amended, favorably reported to the Senate.

During the consideration of Senate Resolution 49, members of the committee, particularly Senator Javits, expressed concern that the 90-day consultative period required by the draft treaty might cause unnecessary delays in various international projects undertaken by the United States or its nationals. With respect to this issue, it is the intent of the committee that 90 days be the maximum period required by such a treaty for the purposes of consultation. In the event that more than one nation should seek to consult with respect to the potential environmental impact of such activities, it is the intent of the committee that this 90-day period be invoked on only one occasion.

COST ESTIMATE

CONGRESSIONAL BUDGET OFFICE,
U.S. CONGRESS,
Washington, D.C., July 13, 1978.

Hon. JOHN SPARKMAN,
Chairman, Committee on Foreign Relations,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed Senate Resolution 49 expressing the sense of the Senate that the U.S. Government should seek the agreement of other governments to a treaty requiring the preparation of an International Environmental Assessment for any project, action, or continuing activity which may be reasonably expected to have a significant adverse effect on the physical environment or environmental interests of another nation or global commons area. There are no direct costs associated with this resolution. It is impracticable to estimate costs associated with the proposed treaty at this time.

Sincerely,

ALICE M. RIVLIN, *Director.*

BUDGET AUTHORITY

This resolution creates no new budget authority.

EVALUATION OF REGULATORY IMPACT

In accordance with rule XXIX of the Standing Rules of the Senate, the committee has evaluated the regulatory impact of Senate Resolution 49 and has concluded that this resolution does not authorize the issuance of any new regulations.

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Calendar No. 944

95TH CONGRESS
2d Session

SENATE

REPORT
No. 95-1015

THANKFUL GIVING RESOLUTION

JULY 17 (legislative day, MAY 17), 1978.—Ordered to be printed

Mr. SPARKMAN, from the Committee on Foreign Relations, submitted the following

REPORT

[To accompany S. Con. Res. 32]

The Committee on Foreign Relations, to which was referred the resolution (S. Con. Res. 32) relating to broadening the observance of Thanksgiving to an occasion of sharing our plenty with the hungry of other lands, having considered the same, reports favorably thereon without amendment and recommends that the resolution do pass.

PURPOSE OF THE RESOLUTION

The purpose of the resolution is to designate Thanksgiving as the day of "Thankful Giving" on the part of Americans. The resolution calls upon the American people to dedicate part of their day on Thanksgiving to thinking about the problems of world hunger, learning about its consequences, and contemplating the ways in which this tragic problem can be solved. It invites American families to share their bounty with the hungry abroad through donations to private and voluntary organizations which play a key part in overseas development.

The resolution also urges that elected officials across the Nation should consider recommending the observance of "Thankful Giving" in their Thanksgiving Day proclamations.

COMMITTEE ACTION

Senate Concurrent Resolution 32 was introduced on July 1, 1977, by the late Senator Hubert H. Humphrey. On July 11, 1978, by a voice vote, the committee agreed to report the resolution to the Senate.

COMMITTEE COMMENTS

The committee approved Senate Concurrent Resolution 32 as a tribute to the late Senator Humphrey's lifelong concern for the less fortunate of the world.

Hunger persists in the world today despite abundant harvests during the past 2 years. One person in six suffers from chronic hunger and malnutrition. While the committee recognized that specific causes of hunger vary from one country to another, as do the potential solutions, experts agree that there are certain underlying contributing factors that exist worldwide:

The world's readily arable land is reaching its limits.

Untapped supplies of fresh water for irrigation are shrinking.

Food production in developing countries barely keeps pace with population growth, so that most of the increases in food production are absorbed.

Hunger is intimately linked with poverty, and only in rare instances has hunger been relieved without dealing with the general problems of underdevelopment.

Pressure on total world food supplies is growing because of increased consumption in affluent nations.

The committee agreed that since Thanksgiving symbolizes our gratitude for the goodness of life in this country, the resolution should serve as a vehicle to broaden this observance to an occasion for sharing our plenty with the hungry of other lands.

The committee noted there is not any regulatory or budgetary impact associated with Senate Concurrent Resolution 32.

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Calendar No. 945

95TH CONGRESS
2d Session

SENATE

REPORT
No. 95-1016

VETERANS' AND SURVIVORS' PENSION IMPROVEMENT ACT

REPORT

OF THE

COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 2384

JULY 17 (legislative day, MAY 17), 1978.—Ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE
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Calendar No. 945

95TH CONGRESS
2d Session

SENATE

REPORT
No. 95-1016

VETERANS' AND SURVIVORS' PENSION IMPROVEMENT ACT

JULY 17 (legislative day MAY 17), 1978.—Ordered to be printed

Mr. CRANSTON, from the Committee on Veterans' Affairs, submitted the following

REPORT

[To accompany S. 2384]

The Committee on Veterans' Affairs, to which was referred the bill (S. 2384) to amend title 38 of the United States Code in order to provide a security pension program for non-service-connected disabled veterans of a period of war who are in need, for surviving spouses of veterans of a period of war who are in need, and for surviving children of veterans of a period of war who are in need; to provide for annual automatic cost-of-living adjustments in the security pension program; to prevent reductions in security pension benefits solely attributable to cost-of-living increases in social security benefits; and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a committee substitute, and an amendment to the title, and recommends that the bill, as amended, do pass.

COMMITTEE AMENDMENTS

The amendments are as follows:

Strike out all after the enacting clause and insert the following:

That this Act may be cited as the "Veterans' and Survivors' Pension Improvement Act".

TITLE I—IMPROVED PENSION FOR VETERANS AND SURVIVORS

SEC. 101. (a) Chapter 15 of title 38, United States Code, is amended by—

(1) redesignating subchapter IV as subchapter V and by renumbering sections 560, 561, and 562 as sections 571, 572, and 573, respectively; and

(2) inserting after subchapter III the following new subchapter IV:

"Subchapter IV—Improved Pension for Non-Service-Connected Disability or Death

"§ 561. Improved pension for veterans of a period of war

"(a) The Administrator shall pay improved pension at the rate prescribed by this section to each veteran of a period of war who meets the service require-

ments of this section (as prescribed in subsection (h) of this section) and who is permanently and totally disabled from non-service-connected disability not the result of the veteran's willful misconduct.

"(b) If the veteran is unmarried (or married but not living with or not reasonably contributing to the support of such veteran's spouse) and has no child to whose support the veteran is reasonably contributing, improved pension shall be paid to the veteran monthly at the annual rate of $3,240, unless the veteran is entitled to improved pension at the rate provided by paragraph (1) of subsection (d) of this section or by subsection (e) of this section, reduced by the amount of the veteran's annual income.

"(c) If the veteran is married and living with or reasonably contributing to the support of such veteran's spouse or has a child to whose support the veteran is reasonably contributing, improved pension shall be paid to the veteran monthly at the annual rate of $4,284, unless the veteran is entitled to improved pension at the rate provided by paragraph (2) of subsection (d) or by subsection (e) of this section. If a veteran who is entitled to improved pension at the rate provided for under this subsection has two or more such family members, the annual rate shall be increased by $660 for each such family member in excess of one. In each case, the rate payable shall be reduced by the amount of the veteran's annual income and the annual income of such family members.

"(d)(1) If the veteran is in need of regular aid and attendance, the annual rate of improved pension payable monthly to the veteran under subsection (b) of this section shall be $5,340, reduced by the amount of the veteran's annual income.

"(2) If the veteran is in need of regular aid and attendance, the annual rate of improved pension payable monthly to the veteran under subsection (c) of this section shall be $6,384. If such veteran has two or more family members, as described in subsection (c) of this section, the annual improved pension rate shall be increased by $660 for each such family member in excess of one. In each case, the rate payable shall be reduced by the amount of the veteran's annual income and the annual income of such family members.

"(e) If the veteran has a disability rated as permanent and total and (1) has additional disability or disabilities independently ratable at 60 per centum or more, or (2) by reason of a disability or disabilities, is permanently housebound but does not qualify for improved pension at the aid and attendance rate under subsection (d) of this section, the annual rate of improved pension payable monthly to the veteran under subsection (b) of this section shall be $4,016, and the annual rate of improved pension payable monthly to the veteran under subsection (c) of this section shall be $5,060. If such veteran has two or more family members, as described in subsection (c) of this section, the annual improved pension rate shall be increased by $660 for each such family member in excess of one. In each case, the rate payable shall be reduced by the amount of the veteran's annual income and the annual income of such family members.

"(f) Where two veterans are married to one another and each meets the disability and service requirements of this section (as prescribed in subsections (a) and (h), respectively, of this section), the annual rates of improved pension payable monthly to such veterans shall be as provided in this subsection. The annual rate of improved pension payable monthly to such veterans shall be a combined annual rate of $4,284. If either veteran is in need of regular aid and attendance, such annual rate shall be $6,384. If both veterans are in need of regular aid and attendance, such annual rate shall be $8,484. If either veteran would be entitled (if not married to a veteran) to the rate provided for under subsection (e) of this section, such annual rate shall be $7,160. In each case, the would be entitled (if not married to one another) to such rate, such annual rate shall be $5,836. If one veteran is in need of regular aid and attendance and the other would be entitled (if not married to a veteran) to the rate provided for under subsection (e) of this section, such annual rate shall be $7,160. In each case, the annual rate shall be increased by $660 for each child to whose support either veteran is, or both veterans are, reasonably contributing and reduced by the amount of the annual income of both veterans and the annual income of each such child.

"(g) The amount of improved pension payable to any veteran under subsection (b), (c), (d), (e), or (f) of this section shall be increased by an amount equal to 25 per centum of the amount otherwise payable in the case of veterans of a period of war if veterans of such period of war were not provided educational benefits or home loan benefits similar to those provided to veterans of later periods of war under chapters 34 and 37, respectively, of this title or under prior corresponding provisions of law.

"(h) A veteran meets the service requirements of this section if such veteran served in the active military, naval, or air service—

"(1) for ninety days or more during a period of war;

"(2) during a period of war and was discharged or released from such service for a service-connected disability;

"(3) for a period of ninety consecutive days or more and such period began or ended during a period of war; or

"(4) for an aggregate of ninety days or more in two or more separate periods of service during more than one period of war.

"(i)(1) The Administrator shall provide that, for the purpose of determining whether or not a veteran is permanently and totally disabled, ratings for service-connected disabilities may be combined with ratings for non-service-connected disabilities.

"(2) Where a veteran is found to be entitled under this section to improved pension and is also entitled to compensation for a service-connected disability, the Administrator shall pay such veteran only the greater benefit.

"(3) Where a veteran is found to be entitled under this section to improved pension on the basis of such veteran's own service and is also entitled to improved pension on the basis of any other person's service, the Administrator shall pay such veteran only the greater benefit.

"(j) Notwithstanding subsections (b), (c), (d), (e), and (f) of this section, benefits under this section may be paid less frequently than monthly where the amount of the annual benefit would be less than 4 per centum of the maximum annual rate payable to a veteran under subsection (b) of this section.

"§ 562. Improved pension for surviving spouses of veterans of a period of war

"(a) The Administrator shall pay improved pension at the rate prescribed by this section to the surviving spouse of each veteran of a period of war who met the service requirements prescribed in section 561(h) of this title or who at the time of death was receiving (or entitled to receive) compensation or retirement pay for a service-connected disability.

"(b)(1) If there is no child, or if no child is in the custody of the surviving spouse, improved pension shall be paid to the surviving spouse monthly at the annual rate of $2,172, reduced by the amount of the surviving spouse's annual income.

"(2) If there is a surviving spouse who has custody of a child, improved pension shall be paid to the surviving spouse monthly at the annual rate of $2,868. If the surviving spouse has custody of two or more children, the annual improved pension rate shall be increased by $660 for each such child in excess of one. In each case, the rate payable shall be reduced by the amount of the surviving spouse's annual income and the annual income of such child or children.

"(c)(1)(A) If there is no child, or if the surviving spouse does not have custody of a child, and the surviving spouse is permanently and totally disabled from disability not the result of the surviving spouse's willful misconduct, improved pension shall be paid to such surviving spouse monthly at the annual rate of $3,240, reduced by the amount of such surviving spouse's annual income.

"(B) If such surviving spouse has custody of one or more children, improved pension shall be paid to the surviving spouse monthly at the annual rate of $4,284, increased by $660 for each child in excess of one, and reduced by the amount of the surviving spouse's annual income and the annual income of such child or children.

"(2) If there is a surviving spouse and (A) the surviving spouse has custody of a child six years of age or under, or (B) there is residing with the surviving spouse a child who before attaining the age of eighteen years, became permanently incapable of self-support and depends upon the surviving spouse for over one-half of such child's support, improved pension shall be paid to such surviving spouse monthly at the annual rate of $4,284. If such surviving spouse has custody of one or more additional children, or if there is residing with the surviving spouse one or more additional children who so became permanently incapable of self-support and depend to such extent upon the surviving spouse for support, the annual improved pension rate shall be increased by $660 for each such additional child. In each case, the rate payable shall be reduced by the amount of the surviving spouse's annual income and the annual income of such child or children.

"(d)(1) If a surviving spouse who is entitled to improved pension under subsection (c)(1)(A) of this section is in need of regular aid and attendance, the annual rate of improved pension payable monthly to the surviving spouse there-

under shall be $5,340, reduced by the amount of the surviving spouse's annual income.

"(2) If a surviving spouse who is entitled to improved pension under subsection (c)(1)(B) of this section is in need of regular aid and attendance, the annual rate of improved pension payable monthly to the surviving spouse thereunder shall be $6,384. If there are two or more children in such surviving spouse's custody, the annual improved pension rate shall be increased by $660 for each such child in excess of one. In each case, the rate payable shall be reduced by the amount of the surviving spouse's annual income and the annual income of the child or children in the custody of the surviving spouse.

"(e) No improved pension shall be paid to a surviving spouse of a veteran under this section unless the spouse was married to the veteran—

"(1) before (A) March 4, 1917, in the case of a surviving spouse of an Indian war veteran, (B) January 1, 1938, in the case of a surviving spouse of a Spanish-American War veteran, (C) December 14, 1944, in the case of a surviving spouse of a Mexican border period or World War I veteran, (D) January 1, 1957, in the case of a surviving spouse of a World War II veteran, (E) February 1, 1965, in the case of a surviving spouse of a Korean conflict veteran, or (F) May 8, 1985, in the case of a surviving spouse of a Vietnam era veteran;

"(2) for one year or more; or

"(3) for any period of time if a child was born of the marriage, or was born to them before the marriage.

"(f) Notwithstanding subsections (b), (c), and (d) of this section, benefits under this section may be paid less frequently than monthly where the amount of the annual benefit would be less than 4 per centum of the maximum annual rate payable to a veteran under section 561(b) of this title.

"§ 563. Improved pension for surviving children of veterans of a period of war

"(a) The Administrator shall pay to each surviving child, who is not in the custody of a surviving spouse eligible for improved pension under section 562 of this title and who is not a child described in section 562(c)(2)(B) of this title for whom a surviving spouse is receiving increased improved pension, of each veteran of a period of war who met the service requirements prescribed in section 561(h) of this title, or who at the time of death was receiving (or entitled to receive) compensation or retirement pay for a service-connected disability, improved pension monthly (1) at the annual rate of $660, reduced by the amount of such child's annual income or (2) if such child is residing with a person or persons legally responsible for such child's support under the laws of the State in which such child resides, at an annual rate equal to the amount by which the appropriate annual rate provided under section 562 of this title exceeds the annual income of such child and such person or persons, but in no event exceeding the amount by which $660 exceeds the annual income of such child. The appropriate annual rate under such section shall be determined in accordance with regulations which the Administrator shall prescribe, and the income of such child and such person or persons shall be determined in accordance with the provisions of section 564 of this title.

"(b) Notwithstanding subsection (a) of this section, benefits under this section may be paid less frequently than monthly where the amount of the annual benefit would be less than 4 per centum of the maximum annual rate payable to a veteran under section 561(b) of this title.

"§ 564. Determinations with respect to annual income; income exclusions

"(a) In determining annual income under this subchapter, all payments of any kind or from any source (including such salary, retirement or annuity payments, or similar income as has been waived, irrespective of whether the waiver was made pursuant to statute, contract, or otherwise; but not including improved pension benefits under this subchapter) shall be included except for—

"(1) donations from public or private relief or welfare organizations;

"(2) amounts equal to amounts paid by a spouse for the expenses of a veteran's last illness, and by a surviving spouse or child of a deceased veteran for—

"(A) the veteran's just debts,

"(B) the expenses of the veteran's last illness, and

"(C) the expenses of the veteran's burial to the extent that such expenses are not reimbursed under chapter 23 of this title;

"(3) amounts equal to amounts paid—

"(A) by a veteran for the last illness and burial of the veteran's deceased spouse or child, or

"(B) by a spouse of a living veteran or the surviving spouse of a deceased veteran for the last illness and burial of a child of such a veteran;

"(4) proceeds of fire insurance policies;

"(5) profit realized from the disposition of real or personal property other than in the course of a business;

"(6) amounts in joint accounts in banks and similar institutions acquired by reason of death of the other joint owner;

"(7)(A) except as provided in subclause (B) of this clause $780, plus one-half of the amount which exceeds $780, of (i) the current-work income of the veteran and the veteran's spouse and, subject to the exclusions set forth in subclause (C) of this clause, of any child or children for whom the veteran is receiving increased improved pension under section 561 (c), (d) (e), or (f) of this title, (ii) the current-work income of the surviving spouse and, subject to the exclusions set forth in subclause (C) of this clause, of any child or children for whom the surviving spouse is receiving increased improved pension under 562 (b), (c), or (d) of this title, or (iii) subject to the exclusions set forth in subclause (C) of this clause, the current-work income of each surviving child receiving improved pension under section 563 of this title;

"(B) in the case of a veteran or surviving spouse in need of regular aid and attendance, $1,560, plus one-half of the amount which exceeds $1,560, of (i) the current-work income of the veteran and the veteran's spouse and, subject to the exclusions set forth in subclause (C) of this clause, of any child or children for whom the veteran is receiving increased improved pension under section 561 (c), (d), (e), or (f) of this title, or (ii) the current-work income of the surviving spouse and, subject to the exclusions set forth in subclause (C) of this clause, of any child or children for whom the surviving spouse is receiving increased improved pension under section 562 (d)(2) of this title; and

"(C)(i) any current-work income of any child, including any surviving child, so long as such child is not required, by virtue of the amount of such income, to file an income tax return under the provisions of section 6012(a)(1)(A)(i) of the Internal Revenue Code of 1954 (26 U.S.C. 6012(a)(1)(A)(i)), to the extent that such current-work income does not exceed the amount specified in such section; and

"(ii) any current-work income of any child, including any surviving child, who is pursuing a postsecondary course of education or vocational rehabilitation or training, to the extent of amounts paid by such child in the previous calendar year for such course of education or vocational rehabilitation or training, including amounts paid for tuition, fees, books, and materials;

"(8) amounts equal to amounts paid in the previous calendar year by the veteran, the veteran's spouse, the surviving spouse, or by or on behalf of the surviving child or children for unreimbursed medical expenses to the extent that—

"(A) such amounts exceed the lesser of—

"(i) $100, or

"(ii) 5 percent of the annual income of the veteran, the surviving spouse, or the surviving child or children (including the income of any person or persons with whom such child is residing if such person or persons are legally responsible for such child's support under the laws of the State in which such child resides), as the case may be, and

"(B) the Administrator determines, under regulations which the Administrator shall prescribe, that such expenses were reasonably necessary for the health needs of—

"(i) the veteran,

"(ii) the veteran's spouse or children for whom the veteran is receiving increased improved pension under section 561 (c), (d), (e), or (f) of this title,

"(iii) the surviving spouse,

"(iv) any child or children for whom the surviving spouse is receiving increased improved pension under section 562 (b), (c), or (d) of this title, or

"(v) the surviving child or children;

but, if the Administrator has determined that adequate health-care services of the same kind as those for which an exclusion had been granted in a previous year were readily available at a facility operated by the Veterans' Administration, expenses for health-care services incurred more than thirty days after the Administrator has notified the veteran, surviving spouse, or surviving child or children, as appropriate, of the Administrator's determination shall not be taken into consideration in determining the amount excludable under this clause if the Administrator further determines that adequate health-care services of the same kind continued to be so available during the period in which such expenses were incurred;

"(9) in the case of a veteran or surviving spouse in need of regular aid and attendance, amounts equal to amounts paid in the previous calendar year by such veteran or surviving spouse for unreimbursed expenses incurred for travel to and from such veteran's or surviving spouse's place of employment, to the extent that such amounts exceed the reasonable expenses which would have been incurred by a nondisabled person using an appropriate means of transportation (public transportation if reasonably available) for such travel; and

"(10) in the case of a veteran or surviving spouse pursuing a course of education or vocational rehabilitation or training, amounts equal to amounts paid in the previous calendar year by such veteran or surviving spouse for such course of education, or vocational rehabilitation or training, including amounts paid for tuition, fees, books, and materials, and in the case of a veteran or surviving spouse in need of regular aid and attendance, amounts paid for unusual transportation expenses (determined in the same manner as in clause (9) of this subsection).

"(b)(1) Before applying any of the exclusions from annual income provided for under clause (7) of subsection (a) of this section, the Administrator shall apply, first to income other than current-work income and next to current-work income, all of the exclusions from annual income provided for under clauses (1) through (6) and (8) through (10) of such subsection.

"(2) In the case of a child, including a surviving child, the Administrator shall apply the exclusions from annual income provided for under subsection (a)(7)(C) of this section before applying any exclusion provided for under subsection (a)(7)(A) or (B), as the case may be, of this section.

"(3) The exclusions from annual income which are provided for in clause (7) of subsection (a) of this section shall apply to all current-work income not otherwise excluded under this section.

"(c) A veteran shall be considered as living with a spouse, even though they reside apart, unless they are estranged.

"(d) Where a fraction of a dollar is involved, annual income shall be fixed at the next lower dollar amount.

"(e) As used in this section, the term 'current-work income' means any income which is earned income within the meaning of section 401(c)(2)(A) and section 911(b) of the Internal Revenue Code of 1954 (26 U.S.C. 401(c)(2)(A) and 911(b)).

"§ 565. Net worth limitation

"(a) The Administrator shall deny or discontinue payment of improved pension to a veteran under section 561 of this title when the corpus of the estate or estates of the veteran, the veteran's spouse, if any, and any child or children for whom the veteran is receiving increased improved pension under subsection (c), (d), (e), or (f) of section 561 of this title, is such that under all the circumstances, including consideration of the veteran's income, it is reasonable that some part of the corpus of such estate or estates be consumed for the veteran's maintenance, excluding from the corpus of the estate of such child or children reasonable amounts set aside for educational or other similarly worthwhile vocational purposes for the benefit of such child or children.

"(b) The Administrator shall deny or discontinue payment of improved pension to a surviving spouse under section 562 of this title when the corpus of the estate or estates of the surviving spouse and any child or children for whom the surviving spouse is receiving increased improved pension under subsection (b), (c), or

(d) of section 562 of this title, is such that under all the circumstances, including consideration of the surviving spouse's income, it is reasonable that some part of the corpus of such estate or estates be consumed for the surviving spouse's maintenance, excluding from the corpus of the estate of such child or children reasonable amounts set aside for educational or other similarly worthwhile vocational purposes for the benefit of such child or children.

"(c) The Administrator shall deny or discontinue payment of improved pension to a surviving child under section 563 of this title when the corpus of the estate of the surviving child is such that under all the circumstances, including consideration of such child's income, the income of a person (or persons) with whom such child is residing who is legally responsible for such child's support under the laws of the State in which such child resides, and the corpus of the estate of such person (or persons), it is reasonable that some part of the corpus of such estate or estates be consumed for the surviving child's maintenance, excluding from the corpus of the estate of such child reasonable amounts set aside for educational or other similarly worthwhile vocational purposes for the benefit of such child.

"§ 566. Election of improved pension benefits

"Except as provided in section 508 of this title, any veteran receiving pension under section 521 of this title, any surviving spouse receiving pension under section 541 of this title, any child receiving pension under section 542 of this title, and any veteran, surviving spouse, or child receiving pension under section 9(b) of the Veterans' Pension Act of 1959 may elect at any time to receive improved pension under this subchapter in lieu of pension payable to such veteran, surviving spouse, or child under any such section. If at any time improved pension is paid pursuant to such an election, the election shall be irrevocable.

"§ 567. Definitions

"For purposes of this subchapter—

"(1) The term 'child' means the veteran's child.

"(2) The term 'veteran' includes a person who has completed at least two years of honorable active military, naval, or air service, as certified by the Secretary concerned, but whose death in such service was not in line of duty.".

(b) The table of sections at the beginning of chapter 15 of such title is amended by striking out

"SUBCHAPTER IV—ARMY, NAVY, AIR FORCE, AND COAST GUARD MEDAL OF HONOR ROLL

"560. Medal of honor roll; persons eligible.
"561. Certificate.
"562. Special provisions relating to pension."

and inserting in lieu thereof

"SUBCHAPTER IV—IMPROVED PENSION FOR NON-SERVICE-CONNECTED DISABILITY OR DEATH

"561. Improved pension for veterans of a period of war.
"562. Improved pension for surviving spouses of veterans of a period of war.
"563. Improved pension for surviving children of veterans of a period of war.
"564. Determinations with respect to annual income; income exclusions.
"565. Net worth limitation.
"566. Election of improved pension benefits.
"567. Definitions.

"SUBCHAPTER V—ARMY, NAVY, AIR FORCE, AND COAST GUARD MEDAL OF HONOR ROLL

"571. Medal of honor roll; persons eligible.
"572. Certificate.
"573. Special provisions relating to pension.".

(c) Subsection (a) of section 503 of such title is amended by striking out "In determining annual income under this chapter," and inserting in lieu thereof "In determining annual income under subchapters II and III of this chapter.".

(d) Section 504 of such title is amended by striking out "and III" and inserting in lieu thereof a comma and "III, and IV".

(e) Section 506 of such title is amended by—

(1) redesignating subsection (b) as subsection (c);

(2) inserting after subsection (a) the following new subsection (b):

"(b) As a condition of granting or continuing improved pension under section 561, 562, or 563 of this title, the Administrator—

"(1) may require from any person applying for, or in receipt of, improved pension such information, proofs, or evidence as the Administrator determines to be necessary in order to determine the annual income and the corpus of the estate of such person, and of any spouse and child for whom the person is receiving or is to receive increased improved pension, and, in the case of a surviving child, of any person with whom such child is residing who is legally responsible for such child's support under the laws of the State in which the child resides;

"(2) shall require that any such applicant or recipient, other than a person in any category of persons whose sole incomes are regularly received and derived from a Federal program and who are exempted from the requirements of this clause under regulations which the Administrator shall prescribe, file each year with the Veterans' Administration (on the form prescribed for such purpose by the Administrator) a report showing—

"(A) the total income which such applicant or recipient (and any such spouse or dependent child) received during the preceding year, the corpus of the estate of such applicant or recipient (and of any such spouse or dependent child) at the end of such year, and in the case of a surviving child, the income and corpus of the estate of any person with whom such child is residing who is legally responsible for such child's support under the laws of the State in which such child resides;

"(B) such applicant's or recipient's estimate for the then current year of the total income such applicant or recipient (and any such spouse or dependent child) expects to receive and of any expected increase in the corpus of the estate of such applicant or recipient (and of any such spouse or dependent child); and

"(C) in the case of a surviving child, the total income of any person with whom such child is residing who is legally responsible for such child's support under the laws of the State in which such child resides and of any expected increase in the corpus of the estate of such person;

"(3) shall require that any such applicant or recipient promptly file a revised report whenever there is a material change in the estimated annual income of such applicant or recipient (or of any such spouse or dependent child) or a material change in such applicant's or recipient's estimate of the corpus of the estate of such applicant or recipient (or of any such spouse or dependent child), and in the case of a surviving child, a material change in the estimated annual income or corpus of the estate of any person with whom such child is residing who is legally responsible for such child's support under the laws of the State in which such child resides; and

"(4) shall require that any such applicant or recipient promptly notify the Administrator of any change in the dependency status of any spouse or child for whom such applicant or recipient is receiving or is to receive increased improved pension."; and

(3) amending subsection (c) (as redesignated by clause (1) of this subsection) by striking out "or 542" and inserting in lieu thereof "542, 561, 562, or 563".

(f) Section 507 of such title is amended by inserting "or IV" after "subchapter II".

(g) Paragraph (3) of section 512(a) of such title is amended to read as follows:

"(3)(A) Except as provided in section 508 of this title, any veteran eligible for pension under this section shall, if such veteran so elects, be paid, in lieu of pension under this section or section 521 of this title, improved pension at the rates prescribed by section 561 of this title and under the conditions (other than the service requirements) applicable to improved pension paid under such section 561. Notwithstanding subparagraph (B) of this paragraph, if at any time improved pension is paid pursuant to such an election, the election shall be irrevocable.

"(B) In the case of any veteran of the Spanish-American War who is receiving, or entitled to receive, pension based on a need for regular aid and attendance, the Administrator shall pay monthly to such veteran pension at the rate which (i) is provided for under subsection (a)(1)(B) of this section, or (ii) would be payable to such veteran if such veteran were receiving pension under section

521 of this title, whichever is the greater. Each change in the amount of pension payment required by this paragraph shall be effective as of the first day of the month during which the facts of the particular case warrant such change, and shall be made without specific application therefor.".

(h) Section 521 of such title is amended by inserting at the end thereof the following new subsection:

"(i)(1) Except as provided in section 508 of this title, no veteran who makes application for and becomes entitled to pension on or after the effective date of the improved pension program provided for under section 561 of this title may be paid pension under this section.

"(2) Any veteran who made application for pension under this section prior to such effective date may be paid pension under this section if (A) the Administrator determines, after such date, that such veteran is entitled, on the basis of such application, to pension, and (B) such veteran elects to receive pension under this section in lieu of improved pension under section 561 of this title.".

(i) Section 532 of such title is amended by inserting at the end thereof the following new subsection:

"(e) Any surviving spouse eligible for pension under this section shall, if such surviving spouse so elects, be paid, in lieu of pension under this section or section 541 of this title, improved pension at the rates prescribed by section 562 of this title and under the conditions (other than the service requirements) applicable under such section 562 to surviving spouses of veterans of a period of war. If at any time improved pension is paid pursuant to such an election, the election shall be irrevocable.".

(j) Section 533 of such title is amended by inserting "(a)" before "Whenever" and inserting at the end thereof the following new subsection:

"(b) Any child eligible for pension under this section shall, if such child so elects, be paid, in lieu of pension under this section or section 542 of this title, improved pension at the rate prescribed by section 563 of this title and under the conditions (other than the service requirements) applicable under such section 563 to children of veterans of a period of war. If at any time improved pension is paid pursuant to such an election, the election shall be irrevocable.".

(k) Section 534 of such title is amended by inserting at the end thereof the following new subsection:

"(d) Any surviving spouse eligible for pension under this section shall, if such surviving spouse so elects, be paid, in lieu of pension under this section or section 541 of this title, improved pension at the rates prescribed by section 562 of this title and under the conditions (other than the service requirements) applicable under such section 562 to surviving spouses of veterans of a period of war. If at any time improved pension is paid pursuant to such an election, the election shall be irrevocable.".

(l) Section 535 of such title is amended by inserting "(a)" before "Whenever" and inserting at the end thereof the following new subsection:

"(b) Any child eligible for pension under this section shall, if such child so elects, be paid, in lieu of pension under this section or section 542 of this title, improved pension at the rate prescribed by section 563 of this title and under the conditions (other than the service requirements) applicable under such section 563 to children of veterans of a period of war. If at any time improved pension is paid pursuant to such an election, the election shall be irrevocable.".

(m) Paragraph (1) of section 536(d) of such title is amended to read as follows:

"(1) Except as provided in section 508 of this title, any surviving spouse eligible for pension under this section shall, if such surviving spouse so elects, be paid, in lieu of pension under this section or section 541 of this title, improved pension at the rates prescribed by section 562 of this title and under the conditions (other than the service requirements) applicable under such section 562 to surviving spouses of veterans of a period of war. Notwithstanding paragraph (2) of this subsection, if at any time improved pension is paid pursuant to such an election, the election shall be irrevocable.".

(n) Section 537 of such title is amended by inserting "(a)" before "Whenever" and inserting at the end thereof the following new subsection:

"(b) Except as provided in section 508 of this title, any child eligible for pension under this section shall, if such child so elects, be paid, in lieu of pension

under this section or section 542 of this title, improved pension at the rate prescribed by section 563 of this title and under the conditions (other than the service requirements) applicable under such section 563 to children of veterans of a period of war. If at any time improved pension is paid pursuant to such an election, the election shall be irrevocable.".

(o) Section 541 of such title is amended by inserting at the end thereof the following new subsection:

"(g)(1) Except as provided in section 508 of this title, no surviving spouse who makes application for and becomes entitled to pension on or after the effective date of the improved pension program provided for under section 562 of this title may be paid pension under this section.

"(2) Any surviving spouse who made application for pension under this section if (A) the Administrator determines, after such date, that such surviving spouse is entitled, on the basis of such application, to pension, and (B) such surviving spouse elects to receive pension under this section in lieu of improved pension under section 562 of this title.".

(p) Section 542 of such title is amended by inserting at the end thereof the following new subsection:

"(d)(1) Except as provided in section 508 of this title, no surviving child, not in the custody of a surviving spouse eligible for pension under section 541 of this title or improved pension under section 562 of this title, who makes application for and becomes entitled to pension on or after the effective date of the improved pension program provided for under section 563 of this title may be paid pension under this section.

"(2) Any surviving child, not in the custody of a surviving spouse eligible for improved pension under section 562 of this title, who made application for pension under this section prior to such effective date may be paid pension under this section if (A) the Administrator determines, after such date, that such surviving child is entitled, on the basis of such application, to pension, and (B) such child elects to receive pension under this section in lieu of improved pension under section 563 of this title.".

(q)(1) The first sentence of subsection (c) of section 571 (as redesignated by subsection (a)(1) of this section) of such title is amended by striking out "562" and inserting in lieu thereof "573".

(2) The second sentence of subsection (a) of section 572 (as redesignated by subsection (a)(1) of this section) of such title is amended by striking out "560" and inserting in lieu thereof "571".

(3) Subsection (b) of section 572 (as redesignated by subsection (a)(1) of this section) of such title is amended by striking out "562" and inserting in lieu thereof "573".

(4) The first sentence of subsection (c) of section 572 (as redesignated by subsection (a)(1) of this section) of such title is amended by striking out "562" and inserting in lieu thereof "573".

(5) Subsection (a) of section 573 (as redesignated by subsection (a)(1) of this section) of such title is amended by striking out "561" and "560" and inserting in lieu thereof "572" and "571", respectively.

TITLE II—IMPROVED DEPENDENCY AND INDEMNITY COMPENSATION FOR SURVIVING PARENTS

SEC. 201. (a) Chapter 13 of title 38, United States Code, is amended by—

(1) inserting "(1)" before "The" in section 401 and inserting at the end of such section the following new paragraph:

"(2) The term 'dependency and indemnity compensation' as used in sections 410, 417, and 418 of this chapter includes improved dependency and indemnity compensation as provided for under section 416 of this chapter.";

(2) redesignating sections 416 and 417 as sections 417 and 418, respectively;

(3) inserting at the end of section 415 the following new subsection:

"(i)(1) Except as provided in paragraph (4) of this subsection, no parent who makes application for and becomes entitled to dependency and indemnity compensation on or after the effective date of the improved dependency and indemnity compensation program provided for under section 416 of this title may be paid dependency and indemnity compensation under this section.

"(2) Any parent who made application under this section prior to such effective date may be paid dependency and indemnity compensation under this section

if (A) the Administrator determines, after such date, that such parent is entitled, on the basis of such application, to dependency and indemnity compensation, and (B) such parent elects to receive dependency and indemnity compensation under this section in lieu of improved dependency and indemnity compensation under section 416 of this title.

"(3) Except as provided in subsection (g) of section 416 of this title, any parent receiving dependency and indemnity compensation benefits under this chapter and any parent receiving death compensation benefits under subchapter III or V of chapter 11 of this title who meets the eligibility requirements of the improved dependency and indemnity compensation program provided for under section 416 of this title may elect at any time to receive improved dependency and indemnity compensation under such section 416 in lieu of such dependency and indemnity compensation under this chapter or death compensation under either such subchapter. If at any time improved dependency and indemnity compensation is paid pursuant to such an election, the election shall be irrevocable.

"(4) Any parent residing outside the fifty States and the District of Columbia on the effective date of the improved dependency and indemnity compensation program provided for under section 416 of this title who becomes eligible for dependency and indemnity compensation on or after such date shall be eligible, but only as long as such parent continuously resides outside the fifty States and the District of Columbia after such date and such parent qualifies for benefits under this section, to apply for and receive benefits under this section,"; and

(4) inserting after section 415 the following new section 416:

"§ 416. Improved dependency and indemnity compensation to parents

"(a) Improved dependency and indemnity compensation shall be paid to the parent or parents of a deceased veteran at the rate prescribed by this section if during the one-year period immediately preceding such veteran's death the veteran contributed one-half or more to the support of such parent or parents.

"(b) If there is only one parent, or there are two parents living apart, improved dependency and indemnity compensation shall be paid to such parent or to each such parent monthly at the annual rate of $3,240, unless such parent (or parents) is entitled to improved dependency and indemnity compensation at the rate provided by subsection (d) of this section, reduced by the amount of such parent's or each such parent's income and the income of the spouse of a remarried parent, if such parent is living with such spouse, to the extent that such spouse's income is reasonable available to or for such parent.

"(c) If there are two parents living together, improved dependency and indemnity compensation shall be paid to such parents monthly at the annual rate of $4,284, reduced by the amount of such parents' annual income.

"(d)(1) If a parent entitled to improved dependency and indemnity compensation under subsection (b) of this section is in need of regular aid and attendance, the annual rate of improved dependency and indemnity compensation payable monthly to such parent shall be $5,340, reduced by the amount of such parent's annual income and the income of the spouse of a remarried parent, if such parent is living with such spouse, to the extent that such spouse's income is reasonable available to or for such parent.

"(2) If there are two parents living together who are entitled to improved dependency and indemnity compensation under subsection (c) of this section and one parent is in need of regular aid and attendance, the annual rate of improved dependency and indemnity compensation payable monthly to such parents shall be $6,384. If both such parents are in such need of regular aid and attendance, the annual rate payable monthly to such parents shall be $8,484. The rate payable shall be reduced by the amount of the parents' annual income.

"(e)(1) Where a parent is found to be entitled to improved dependency and indemnity compensation under this section and such parent is also entitled to improved pension under section 561, 562, or 563 of this title, the Administrator shall pay such parent only the greater benefit.

"(2) Where a parent is found to be entitled to improved dependency and indemnity compensation under this section and such parent is also a veteran entitled to compensation for a service-connected disability, the Administrator shall pay such parent only the greater benefit.

"(f) Notwithstanding subsections (b), (c), and (d) of this section, benefits under this section may be paid less frequently than monthly where the amount of the annual benefit would be less than 4 per centum of the maximum annual rate payable to a parent under subsection (b) of this section.

"(g) Improved dependency and indemnity compensation benefits payable under this section shall not be paid to any person residing outside the fifty States and the District of Columbia.

"(h)(1) In determining annual income under this section, all payments of any kind or from any source (including such salary, retirement or annuity payments, or similar income as has been waived, irrespective of whether the waiver was made pursuant to statute, contract, or otherwise; but not including improved dependency and indemnity compensation benefits under this section) shall be included except—

"(A) donations from public or private relief or welfare organizations;

"(B) amounts equal to amounts paid by a parent for the expenses of a veteran's last illness, and by a parent of a deceased veteran for—

"(i) the veteran's just debts,

"(ii) the expenses of the veteran's last illness, and

"(iii) the expenses of the veteran's burial to the extent that such expenses are not reimbursed under chapter 23 of this title;

"(C) amounts equal to amounts paid by a parent for the last illness and burial of the parent's deceased spouse;

"(D) proceeds of fire insurance policies;

"(E) profit realized from the disposition of real or personal property other than in the course of a business;

"(F) amounts in joint accounts in banks and similar institutions acquired by reason of the death of the other joint owner;

"(G)(i) except as provided in subclause (ii) of this clause, $780, plus one-half of the amount which exceeds $780, of (I) the current-work income of such parent or parents, and (II) in the case of a parent who has remarried, the current-work income of such parent and such parent's spouse with whom such parent is living; or

"(ii) in the case of a parent in need of regular aid and attendance, $1,560, plus one-half of the amount which exceeds $1,560, of (I) the current-work income of such parent or parents, and (II) in the case of a parent who has remarried, the current-work income of such parent and such parent's spouse with whom such parent is living;

"(H) amounts equal to amounts paid in the previous calendar year by a parent for unreimbursed medical expenses which exceed the lesser of (i) $100, or (ii) 5 per centum of the annual income of the parent, parents, or, in the case of a parent who has remarried, the annual income of such parent and such parent's spouse with whom such parent is living, to the extent that the Administrator determines, under regulations which the Administrator shall prescribe, that such expenses were reasonably necessary for the health needs of the parent or parents;

"(I) in the case of a parent in need of regular aid and attendance, amounts equal to amounts paid in the previous calendar year by such parent for unreimbursed expenses incurred for travel to and from such parent's place of employment, to the extent that such amounts exceed the reasonable expenses which would have been incurred by a nondisabled person using an appropriate means of transportation (public transportation if reasonably available) for such travel; and

"(J) in the case of a parent pursuing a course of education or vocational rehabilitation or training, amounts equal to amounts paid in the previous calendar year by such parent for such course of education or vocational rehabilitation or training, including amounts paid for tuition, fees, books, and materials, and in the case of a parent in need of regular aid and attendance, amounts paid for unusual transportation expenses (determined in the same manner as in clause (I) of this paragraph).

"(2)(A) Before applying any of the exclusions from annual income provided for under clause (G) of paragraph (1) of this subsection, the Administrator shall apply all of the exclusions from annual income provided for under clauses (A) through (F) and (H) through (J) of such paragraph, first to income other than current-work income and next to current-work income.

"(B) The exclusions from annual income which are provided for in clause (G) of paragraph (1) of this subsection shall apply to all current-work income not otherwise excluded under this subsection.

"(i) A parent shall be considered as living with a spouse, even though they reside apart, unless they are estranged.

"(j) As used in subsection (h) of this section, the term 'current-work income' means any income which is earned income within the meaning of section 401(c)(2)(A) and section 911(b) of the Internal Revenue Code of 1954 (26 U.S.C. 401(c)(2)(A) and 911(b)).

"(k) The Administrator shall deny or discontinue payment of improved dependency and indemnity compensation to a parent under this section when the corpus of the estate or estates of the parent, the parents, and the spouse of a remarried parent with whom such parent is living, is such that under all the circumstances, including the consideration of such parent's, parents', or spouse's income, it is reasonable that some part of the corpus of such estate or estates be consumed for the parent's or parents' maintenance.

"(l) As a condition of granting or continuing improved dependency and indemnity compensation under this section, the Administrator—

"(1) may require from any parent applying for, or in receipt of, improved dependency and indemnity compensation such information, proofs, or evidence as the Administrator determines to be necessary in order to determine the annual income and the corpus of the estate of such parent;

"(2) shall require that any such parent, other than a person in any category of persons whose sole income is regularly received and derived from a Federal program and who are exempted from the requirements of this clause under regulations which the Administrator shall prescribe, file each year with the Veterans' Administration (on the form prescribed for such purpose by the Administrator) a report showing (A) the total income which such parent received (and in the case of a remarried parent, the total income which such remarried parent's spouse received) during the preceding year, and the corpus of the estate of such parent (and in the case of a remarried parent, the corpus of the estate of such remarried parent's spouse) at the end of that year, and (B) such parent's estimate for the then current year of the total income such parent expects to receive (and in the case of a remarried parent, the total income which such remarried parent's spouse expects to receive) and of any expected increase in the corpus of the estate of such parent (and in the case of a remarried parent, any expected increase in the corpus of the estate of such remarried parent's spouse); and

"(3) shall require that any such parent promptly file a revised report whenever there is a material change in the estimated annual income of such parent (or such spouse) or a material change in such parent's estimate of the corpus of the estate of such parent (or such spouse).

"(m) Where a fraction of a dollar is involved, annual income shall be fixed at the next lower dollar amount.

"(n) If the Administrator ascertains that there have been overpayments to a parent under this section, the Administrator shall deduct such overpayments (unless waived) from any future payments made to such parent under this section."

(b) The table of sections at the beginning of chapter 13 of such title is amended by striking out

"416. Dependency and indemnity compensation in cases of prior deaths.
"417. Restriction on payments under this chapter."

and inserting in lieu thereof

"416. Improved dependency and indemnity compensation to surviving parents.
"417. Dependency and indemnity compensation in cases of prior deaths.
"418. Restrictions on payments under this chapter.".

(c) Paragraph (2) of section 417(a) (as redesignated by subsection (a)(2) of this section) of such title is amended to read as follows:

"(2) Except as provided in subsection (g) of section 416 of this title, any parent receiving death compensation under subchapter III or V of chapter 11 of this title by reason of a death occurring before January 1, 1957, shall, if such parent so elects, be paid improved dependency and indemnity compensation at the rates prescribed by section 416 of this title and under the conditions applicable under that section to parents of veterans whose deaths occurred on or after January 1, 1957. If at any time improved dependency and indemnity compensation is paid pursuant to such an election, the election shall be irrevocable.".

TITLE III—MISCELLANEOUS PROVISIONS AND CONFORMING AMENDMENTS

SEC. 301. Paragraph (14) of section 101 of title 38, United States Code, is amended by inserting "or other periodic" after "monthly".

SEC. 302. Paragraph (15) of section 101 of title 38, United States Code, is amended by inserting "or other periodic" after "monthly".

SEC. 303. Clause (4) of subsection (b) of section 3012 of title 38, United States Code, is amended to read as follows:

"(4) by reason of change in income or corpus of estate shall be the last day of the calendar year in which the change occurred, except that such effective date shall be the last day of the month in which the change occurred for persons receiving payments under section 416, 561, 562, or 563 of this title;".

SEC. 304. (a) Chapter 53 of title 38, United States Code, is amended by inserting at the end thereof the following new section:

§ 3112. Annual adjustment of certain benefit rates and income exclusions.

"(a) Whenever, in any calendar year after 1978, benefit payments under title II of the Social Security Act are increased by a percentage effective with any month as a result of a determination made under section 215(i) of such Act, each of the dollar amounts in effect for such month for benefits payable under sections 416, 561, 562, and 563 of this title and each of the dollar amounts shown in subsection (h)(1)(G) of section 416 and subsection (a)(7) of section 564 of this title, as specified in such sections or subsections or as previously increased under this section, shall be increased by the same percentage (and rounded in such manner as the Administrator deems equitable and appropriate), effective beginning with benefits payable for such month; and such dollar amounts so increased shall be published in the Federal Register at the same time as the material required by section 215(i)(2)(D) of the Social Security Act to be published therein by reason of a determination under such section 215(i).

"(b) Notwithstanding any other provision of law, whenever benefit rates payable under sections 416, 561, 562, and 563 of this title are adjusted in accordance with subsection (a) of this section, the Administrator shall recompute the amount of annual improved pension payable to each veteran, surviving spouse, and surviving child, and the amount of annual improved dependency and indemnity compensation payable to each surviving parent, who is also entitled to receive payments under any other Federal program or programs, the rates of which are adjusted as a result of a determination made under section 215(i) of the Social Security Act. Any such recomputation shall be made on the basis of the annual rate of payments payable to a veteran, surviving spouse, surviving child, or surviving parent under such other Federal program or programs, as increased as a result of the determination made under section 215(i) of the Social Security Act; and the benefit rates recomputed under this subsection shall become effective beginning with the first month in which both the increase in benefit rates payable under sections 416, 561, 562, and 563 of this title and the increase in payments under such other Federal program or programs are effective.".

(b) The table of sections at the beginning of chapter 53 of such title is amended by inserting

"3112. Annual adjustment of certain benefit rates and income exclusions."

below

"3111. Prohibition of certain benefit payments.".

SEC. 305. (a) In any case in which any person is receiving, on the effective date of this Act, pension under chapter 15 of title 38, United States Code, or under section 9(b) of the Veterans' Pension Act of 1959, or dependency and indemnity compensation under chapter 13 of such title, and such person, on or before the last day of the third calendar month following the month in which this Act became effective, elects to receive improved pension or improved dependency and indemnity compensation provided for in the amendments made by this Act, the Administrator of Veterans' Affairs shall pay such person improved pension or improved dependency and indemnity compensation benefits retroactive to the effective date of this Act to the extent that payments under such improved pension program or improved dependency and indemnity compensation program, as the case may be, exceed pension or dependency and indemnity compensation benefits actually paid to such person.

(b) Nothing in the amendments made by this Act shall affect the eligibility of any person who is entitled to receive pension under section 521, 541, or 542 of title 38, United States Code, or under section 9(b) of the Veterans' Pension Act of 1959, or dependency and indemnity compensation under chapter 13 of title 38, United States Code, as in effect on the day before the effective date of

this Act, to continue to receive pension or dependency and indemnity compensation under such section or such chapter as long as such person continues to qualify under such section or such chapter for such pension or dependency and indemnity compensation, as the case may be. The preceding sentence shall not apply in the case of any person for any period on and after the date on which such person is granted, pursuant to the application of such person, improved pension benefits under section 561, 562, or 563 of title 38, United States Code, or improved dependency and indemnity compensation under section 416 of such title, as amended by this Act.

SEC. 306. (a) Chapter 15 of title 38, United States Code, is amended by inserting after section 507 the following new section:

"§ 508. Special provision relating to persons residing outside the fifty States and the District of Columbia

"(a) Improved pension benefits provided for under subchapter IV of this chapter may not be paid to any person residing outside the fifty States and the District of Columbia.

"(b) Any person residing outside the fifty States and the District of Columbia on the effective date of this section who becomes eligible for pension on or after such date shall be eligible, but only as long as such person continuously resides outside the fifty States and the District of Columbia after such date and such person qualifies for benefits under subchapter II or III of this chapter, to apply for and receive benefits under section 521 in the case of a veteran, under section 541 in the case of a surviving spouse, or under section 542 in the case of a surviving child.".

(b) The table of sections at the beginning of chapter 15 of such title is amended by inserting

"508. Special provision relating to persons residing outside the fifty States and the District of Columbia."

below

"507. Disappearance.".

(c) (1) The Administrator of Veterans' Affairs shall carry out a comprehensive study of the income characteristics of veterans of a period of war (as defined in section 101(11) of title 38, United States Code) and their survivors who are residing outside the fifty States and the District of Columbia, including those who are receiving pension benefits under chapter 15 of title 38, United States Code, or under section 9(b) of the Veterans' Pension Act of 1959. The Administrator shall include in such study (A) an analysis of the issues involved in the payment of non-service-connected pension benefits to such persons, (B) analyses of such aspects of the economy of each foreign country and each territory, possession, and Commonwealth of the United States in which a substantial number of such persons reside as are relevant to such issues, such as the rate of inflation, the standard of living, and subsistence levels in such foreign country or such territory, possession, or Commonwealth, (C) estimates of the present and future costs of the payment of pension benefits to such persons, and (D) estimates of the potential costs of paying improved pension benefits to such persons.

(2) The Administrator of Veterans' Affairs shall report to the Congress and the President, not later than February 1, 1979, the results of such study, together with the Administrator's recommendations as to the desirability of modifying the Veterans' Administration non-service-connected pension program for veterans of a period of war (as defined in section 101(11) of title 38, United States Code) and their survivors who are residing outside the fifty States and the District of Columbia and of extending eligibility for improved pension benefits (as provided for in sections 561, 562, and 563 of such title, as added by section 101(a)(2) of this Act) to such veterans and survivors, including recommendations as to the desirability of modifying such improved pension program for such persons if such eligibility were to be extended.

SEC. 307. Paragraph (1) of section 3203(a) of title 38, United States Code, is amended to read as follows:

"(1)(A) Where any veteran having neither spouse nor child is being furnished domiciliary care by the Veterans' Administration, no pension in excess of $60 per month shall be paid to or for the veteran for any period after the end of the second full calendar month following the month of admission for such care.

"(B) Where any veteran having neither spouse nor child is being furnished hospital or nursing home care by the Veterans' Administration, no pension in

excess of $60 per month shall be paid to or for the veteran for any period after (i) the end of the third full calendar month following the month of admission for such care, or (ii) the end of the sixth full calendar month following the month of admission for care in any case in which the Administrator finds that the receipt of pension benefits (to which the veteran is otherwise entitled) for three additional months will reasonably facilitate such veteran's ability to return to the community.

"(C) No pension in excess of $60 per month shall be paid to or for a veteran having neither spouse nor child for any period after the month in which such veteran is readmitted for care described in subparagraph (A) or (B) of this paragraph and furnished by the Veterans' Administration if such veteran is readmitted within six months of a period of care of not less than two full calendar months.".

TITLE IV—NAMING OF CERTAIN VETERANS' ADMINISTRATION HOSPITALS

SEC. 401. The Veterans' Administration hospital in Tampa, Florida, shall hereafter be known and designated as the "James A. Haley Veterans' Hospital". Any reference to such hospital in any law, regulation, document, map, record, or other paper of the United States shall be deemed to be a reference to the James A. Haley Veterans' Hospital.

SEC. 402. The Veterans' Administration hospital in Bedford, Massachusetts, shall hereafter be known and designated as the "Edith Nourse Rogers Memorial Veterans' Hospital". Any reference to such hospital in any law, regulation, document, map, record, or other paper of the United States shall be deemed to be a reference to the Edith Nourse Rogers Memorial Veterans' Hospital.

TITLE V—EFFECTIVE DATES

SEC. 501. (a) The amendments made by this Act to title 38, United States Code, and the provisions of subsections (c) and (d) of section 304 of this Act shall become effective on October 1, 1978.

(b) All provisions of this Act other than those specified in subsection (a) of this section shall be effective on the date of enactment of this Act.

Amend the title so as to read:

A bill to amend title 38, United States Code, in order to provide an improved pension program for non-service-connected disabled veterans of a period of war who are in need, for surviving spouses of veterans of a period of war who are in need, and for surviving children of veterans of a period of war who are in need; to provide for an improved dependency and indemnity compensation program for surviving parents of veterans who have died from service-connected disabilities who are in need; to provide for annual automatic cost-of-living adjustments in the improved pension and improved dependency and indemnity compensation programs; to prevent reductions in improved pension and improved dependency and indemnity compensation benefits solely attributable to cost-of-living increases in social security benefits; and for other purposes.

INTRODUCTION

S. 2384 was introduced on December 15, 1977, by Senator Alan Cranston, Chairman of the Committee on Veterans' Affairs, with the cosponsorship of all the members of the Committee and Senator Williams.

The introduction of S. 2384, providing for an improved program of pension benefits, was an important step in what has been a 5-year effort to correct the inequities and other deficiencies in the Veterans' Administration pension program. The original impetus for a thorough reworking of the pension program was provided by the testimony of the VA in June 1973, that the current pension program contained "inconsistencies, inequities, and anomalies, which cannot be corrected unless the entire framework of the program is restructured."

During the 93d and 94th Congresses, the Committee on Veterans' Affairs—under the chairmanship of Senator Vance Hartke—conducted extensive investigations, held hearings, and reviewed studies by the VA on the pension program. On December 9, 1975, the Committee favorably reported S. 2635, a comprehensive reform measure. That bill was passed unanimously by the Senate on December 15, 1975, but the House did not act on it in the 94th Congress.

However, section 404(a) of Public Law 94–432, the Veterans and Survivors Pension Adjustment Act of 1976, declared it to be the sense of the Congress that the existing pension program—

(1) does not provide sufficient assistance to meet the needs of some eligible veterans and survivors;

(2) has developed some inconsistencies, inequities, and anomalies which prevent it from operating in the most efficient and equitable manner; and

(3) subjects many pensioners annually to reductions in their pensions.

Therefore, in section 404(b) of that law, Congress mandated that by October 1, 1977, the Administrator of Veterans' Affairs report to the President and Congress findings and recommendations based on a comprehensive investigation, analysis, and evaluation of existing and alternative non-service-connected pension programs.

On January 30, 1978, the Veterans' Administration submitted to the Congress its report entitled "Analysis and Evaluation of the Non-Service-Connected Pension Program." In the report, the VA described the inequities it had identified in the current program and recommended that a new pension program be developed in accordance with certain principles advocated by the VA.

On February 3, 1978, the full Committee held hearings on S. 2384. Testimony was received from Dorothy Starbuck, Chief Benefits Director of the Veterans' Administration and other representatives of the VA, and representatives of The American Legion, Veterans of Foreign Wars, AMVETS, Paralyzed Veterans of America, Disabled American Veterans, Veterans of World War I, and Military Widows.

After reviewing the testimony received during the February 3 hearing and the VA's report, and giving consideration to various recommendations made by VA staff in discussions with staff of the Committee, the Committee met in open session on March 23, 1978, to consider S. 2384 and unanimously voted to report S. 2384 with an amendment in the nature of a substitute and a title amendment.

Summary of S. 2384 as Reported

Basic Purpose

The basic purpose of S. 2384 as reported, the "Veterans' and Survivors' Pension Improvement Act" (hereinafter referred to as "the Committee bill"), is to provide for a new, more equitable and adequate pension program—to be known as "improved pension"—for needy wartime veterans who are disabled by reason of non-service-connected disability or who are 65 years old or older and for the needy surviving spouses and children of wartime veterans. The improved pension program is designed to achieve the following major objectives:

First, assure an income standard above the Department of Labor's "poverty guidelines" so that all eligible veterans and survivors receive a pension commensurate with their need;

Second, prevent eligible veterans and survivors from having to turn to welfare;

Third, treat similarly-circumstanced veterans and survivors equally;

Fourth, guarantee regular annual increases in improved pension benefits based on the increase in the Consumer Price Index; and

Fifth, guarantee that annual increases in improved pension benefits occur at the same rate and at the same time as cost-of-living increases in social security benefit rates—so that no person in the improved pension program will suffer a reduction in pension solely attributable to a cost-of-living increase in benefits under social security or any other Federal retirement program.

The Committee bill also provides for a similar new program of need-based dependency and indemnity compensation benefits—to be known as "improved dependency and indemnity compensation for surviving parents"—for the needy surviving parents of veterans who died as a result of service-connected disabilities. In addition, it provides for a cost-of-living increase in the pension payable to certain institutionalized veterans. Finally, it names two Veterans' Administration hospitals located in Tampa, Fla., and Bedford, Mass., after James A. Haley and the late Edith Nourse Rogers, respectively.[1]

Summary of Provisions

The Committee bill consists of five titles: Improved pension for veterans and survivors; Improved dependency and indemnity compensation for surviving parents; Miscellaneous provisions and conforming amendments; Naming of certain Veterans' Administration hospitals; and Effective dates.

Title I: Improved Pension for Veterans and Survivors.—This title includes amendments to chapter 15 of title 38, United States Code, which would:

(1) Establish a new program of pension benefits to be known as "improved pension", generally payable monthly to needy wartime veterans who are permanently and totally disabled by reason of non-service-connected disability, or who are 65 or over, with the following annual rates, reduced by the amount of the annual countable income of the veteran and that of the veteran's spouse and dependent children, if any:

Veteran without dependent spouse or child	$3,240
Veteran with one dependent (spouse or child)	4,284
Veteran in need of regular aid and attendance without dependents	5,340
Veteran in need of regular aid and attendance with one dependent	6,384
Veteran permanently housebound without dependents	4,016
Veteran permanently housebound with one dependent	5,060
Two veterans married to one another	4,284
Increase for each additional dependent child	660

[1] Originally, the Committee also approved an amendment to name the Little Rock, Ark., VA hospital in memory of the late Senator from Arkansas John L. McClellan. However, since that time, legislation for that purpose has been enacted (Public Law 95-311), and that provision has been deleted from the bill as reported.

(2) Provide for a 25-percent increase in improved pension benefits payable to veterans of a period of war if veterans of that period of war—such as World War I—were not made eligible for VA educational assistance or home loan benefits similar to those provided under chapters 34 and 37 of title 38, United States Code, or prior corresponding provisions of law.

(3) Establish a new program of improved pension benefits payable monthly to needy surviving spouses of wartime veterans with annual rates for permanently and totally disabled surviving spouses, those who are 65 or over, and those who have a dependent child aged 6 or under or helpless, equal to those applicable to veterans; with rates for disabled surviving spouses in need of regular aid and attendance equal to those for veterans, and with an increase for each additional dependent child equal to that payable to a veteran for an additional dependent child. The applicable annual rates, reduced by the amount of the surviving spouse's annual countable income, and by the income of dependent children, if any, are as follows:

Surviving spouse age 65 or over or permanently and totally disabled without dependent children	$3,240
Surviving spouse age 65 or over or permanently and totally disabled with one dependent child	4,284
Surviving spouse with one dependent child age 6 or under or helpless	4,284
Surviving spouse permanently and totally disabled in need of regular aid and attendance without dependent children	5,340
Surviving spouse permanently and totally disabled in need of regular aid and attendance with one dependent child	6,384
Other surviving spouse without dependent children	2,172
Other surviving spouse with one dependent child	2,868
Increase for each additional dependent child	660

(4) Establish a new program of improved pension benefits payable monthly to each of the needy surviving children of wartime veterans. Such children would be eligible if there is no surviving spouse, if the surviving spouse is ineligible for pension by reason of income or remarriage, or if such children are not in the custody of the surviving spouse. The applicable annual rates, reduced by the child's annual countable income and by the incomes of any persons with whom the child is residing who are legally responsible for the child's support under the laws of the State in which the child resides, are as follows:

Each surviving child not in the custody of a person legally responsible for the child's support under the laws of the State in which the child resides	$660
Each surviving child in the custody of such a person (not to exceed)	660

(5) Require that all income from whatever source derived be counted for purposes of determining eligibility and the amount of improved pension payable, subject to the following exclusions:

(A) Donations from public or private relief or welfare organizations;

(B) Amounts equal to amounts paid by a surviving spouse or child for the veteran's just debts and the unreimbursed expenses of the veteran's last illness and burial;

(C) Amounts equal to amounts paid for the last illness and burial expenses of a veteran's spouse or child;

(D) Fire insurance policy proceeds;

(E) Profit from the sale of real or personal property other than in the course of a business;

(F) Amounts in joint accounts acquired by reason of the death of the other co-owner;

(G) (i) $780, plus one-half of the amount which exceeds $780, of the current-work income (not otherwise excluded) of the veteran and the veteran's spouse and any children for whom the veteran is receiving increased improved pension, of the surviving spouse and any children for whom the surviving spouse is receiving increased improved pension, or of the surviving child; or (ii) $1,560, plus one-half of the amount which exceeds $1,560 of the current-work income (not otherwise excluded) of a veteran in need of regular aid and attendance and the veteran's spouse and any children for whom the veteran is receiving increased improved pension, or of a surviving spouse in need of regular aid and attendance and any children for whom the surviving spouse is receiving increased improved pension. In the case of a dependent or surviving child's current-work income, such income would be countable (and thus subject to the exclusion described above) only to the extent that it exceeds the amount of income required before the child must file a Federal income tax return under section 6012(a)(1)(A)(i) of the Internal Revenue Code of 1954 (26 U.S.C. 6012(a)(1)(A)(i)); postsecondary educational or vocational rehabilitation training expenses paid by the child would also be excludable from a dependent or surviving child's current-work income. For the purposes of these provisions, the term "current-work income" is defined as earned income within the meaning of section 401(c)(2)(A) and section 911(b) of the Internal Revenue Code of 1954 (26 U.S.C. 401(c)(2)(A) and 911(b)). Those sections generally provide that "earned income" means income from wages, salaries, professional fees, or net income from self-employment. An unmarried person is presently required to file a Federal income tax return under section 6012 of the Internal Revenue Code of 1954 (26 U.S.C. 6012(a)(1)(A)(i)) if such person's taxable income exceeds $2,950;

(H) Amounts equal to the lesser of amounts in excess of $100 or 5 percent of annual income, which were paid in the previous calendar year for unreimbursed medical expenses by the veteran, the veteran's spouse, the surviving spouse, or by or on behalf of the surviving children if such expenses were reasonably necessary for the health care of the veteran, the veteran's spouse or child for whom the veteran receives increased improved pension, the surviving spouse, the surviving spouse's children for whom the surviving spouse receives increased improved pension, or the surviving child or children. Where VA health care is available, however, this exclusion would be disallowed under the following circumstances. When such an exclusion has been allowed in a previ-

ous year for expenses incurred for services at a non-VA facility despite the fact that adequate health-care services were readily available at a VA facility, a further exclusion for such expenses would be disallowed if, after notice, they are incurred for services of the same kind and such services continue to be readily available at a VA facility;

(I) Amounts equal to amounts paid in the previous calendar year by a veteran or surviving spouse in need of regular aid and attendance for expenses incurred in traveling to and from such person's place of employment, to the extent that such expenses exceed those which would have been incurred by a nondisabled person using an appropriate means of transportation; and

(J) Amounts equal to amounts paid in the previous calendar year by a veteran or surviving spouse pursuing a course of education or vocational rehabilitation or training for educational expenses, including tuition, fees, books, materials, and, in the case of such a veteran or surviving spouse in need of regular aid and attendance, related unusual transportation expenses.

(6) Require that the payment of improved pension be denied or discontinued when the net worth of a veteran, including the net worth of the veteran's spouse and any dependent children for whom the veteran receives increased improved pension, is such that some portion thereof could reasonably be expected to be used for the support of the veteran. Similar provisions would require the denial or discontinuance of improved pension if the net worth of a surviving spouse, including the net worth of dependents, or of a surviving child, including the net worth of any persons with whom the child is residing who are legally responsible for the child's support, is excessive. In all cases, amounts reasonably set aside for educational or vocational purposes would be excluded from the determination of a dependent or surviving child's net worth.

(7) Require income and net worth reports to be filed annually with the VA by any person applying for or receiving improved pension; and require prompt notifications to the VA by such persons of changes in income and net worth and in the dependency status of family members, with exemptions (to be established under regulations to be prescribed by the Administrator) from such annual reporting for categories of persons whose sole incomes are federally-derived and regularly received.

(8) Allow all persons residing in the 50 States or the District of Columbia entitled to VA pension under provisions of law in effect on the day before the effective date of the new program to elect benefits under the improved pension program or to continue receiving benefits under such provisions as long as they remain eligible under the terms and conditions of such provisions, as in effect on the day before the effective date of the new program.

(9) Provide that no person residing in the 50 States or the District of Columbia who becomes entitled to VA pension on or after the effective date of the new program shall be entitled to

receive benefits under provisions of law in effect on the day before such effective date unless such person's application was pending on such day.

Title II: Improved Dependency and Indemnity Compensation for Surviving Parents.—This title includes amendments to chapter 13 of title 38, United States Code, which would:

(1) Establish a new program of improved dependency and indemnity compensation benefits (DIC), to be known generally as "improved dependency and indemnity compensation for surviving parents" (or "improved parents' DIC"), payable monthly to the needy surviving parent or parents of a veteran who died as a result of a service-connected disability, if the veteran provided one-half or more of the annual support of such parent during the year immediately preceding the veteran's death, with the following annual rates, reduced by the amount of the parent or parent's annual countable income and the income of a remarried parent's spouse which is available to or for such parent:

One parent or each parent, if the parents are living apart	$3,240
Two parents living together	4,284
One parent (or each parent, if the parents are living apart) in need of regular aid and attendance	5,340
Two parents living together, one of whom is in need of regular aid and attendance	6,384
Two parents living together, both of whom are in need of regular aid and attendance	8,484

(2) Establish income determinations and exclusions, net worth determinations, and annual reporting requirements similar to those provided for under the improved pension program established under title I of the bill.

(3) Allow parents residing in the 50 States and the District of Columbia who are receiving benefits under provisions of law in effect on the day before the effective date of the new program to elect improved parents' DIC benefits if they are eligible or to continue receiving benefits under such provisions as long as they remain eligible under the terms and conditions of such provisions, as in effect on the day before the effective date of the new program.

(4) Provide that no parent residing in the 50 States or the District of Columbia who becomes entitled to parents' DIC on or after the effective date of the new program shall be entitled to receive benefits under provisions of law in effect on the day before such effective date unless such parent's application was pending on such day.

(5) Prohibit improved parents' DIC benefits from being paid to parents residing outside the 50 States and the District of Columbia, and allow such parents who become eligible on or after the effective date of the new program to apply for and receive DIC benefits under provisions of law as in effect on the day before the effective date of the new program as long as they continuously reside outside the 50 States and the District of Columbia.

Title III: Miscellaneous Provisions and Conforming Amendments.—This title includes amendments to chapters 1, 15, 53, and 55 of title 38, United States Code, and other provisions which would:

(1) Redefine, in part, dependency and indemnity compensation and pension to mean a monthly or other periodic payment.

(2) Provide that a reduction in or discontinuance of improved pension or improved parents' DIC benefits resulting from a change in income or net worth would be effective at the end of the month in which the change occurs.

(3) Require the VA to increase improved pension and improved parents' DIC rates annually by the same percentage and at the same time as social security cost-of-living increases.

(4) Require the VA to redetermine the amount of improved pension or improved parents' DIC to which a person is entitled at the same time that social security benefit payments are increased in such a way that no person in either of the improved programs would suffer a reduction in improved benefits attributable to a cost-of-living increase in social security benefit payments or payments under any other Federal program which are increased in accordance with the social security increase.

(5) Provide that any person who is receiving pension or parents' DIC benefits on the effective date of the new programs who elects benefits under either of the improved programs within 3 calendar months of such effective date shall be paid improved benefits which exceed benefits already paid retroactive to the effective date.

(6) Provide that benefits under the improved pension program may not be paid to any person residing outside the 50 States and the District of Columbia, but that any person residing outside the 50 States and the District of Columbia on the effective date of the new program who becomes eligible for pension on or after such effective date may apply for and receive benefits under provisions of law as in effect on the day before such effective date as long as such person continuously resides outside the 50 States and the District of Columbia.

(7) Require a comprehensive study by the VA of the issues involved in the payment of pension benefits to persons residing outside the 50 States and the District of Columbia, including analyses of those aspects of the economies of the countries or U.S. territories, possessions, or Commonwealth where such persons reside which are relevant to such issues, estimates of present and future costs of pension benefits or improved pension to such persons, and recommendations to the Congress on the desirability of modifying the pension program in effect on the day before the effective date of the new program for such persons or extending benefits under the improved pension program to such persons.

(8) Provide that the maximum pension payable to a veteran who has no spouse or child shall not exceed $60 per month after (A) 2 full calendar months of VA domiciliary care, (B) 3 full calendar months of VA hospital or nursing home care, unless the VA determines that a continuation of pension benefits for an additional 3 months will facilitate the veteran's return to the community, or (C) the month of readmission for such care if the readmission occurs within 6 months of a period of care lasting 2 full calendar months or more.

Title IV: Naming of Certain Veterans' Administration Hospitals.—This title provides that the VA hospitals in Tampa, Fla., and Bedford, Mass., shall be named the James A. Haley Veterans' Hospital and

the Edith Nourse Rogers Memorial Veterans' Hospital, respectively.

Title V: Effective Dates.—This title provides for an effective date of October 1, 1978, for the improved pension and improved parents' DIC programs, and for provisions relating to the protection of benefits under existing provisions of law and the limited retroactivity for persons making prompt elections of improved benefits. Other provisions of the bill would be effective upon enactment.

BACKGROUND

Historical Development of the Non-Service-Connected Pension Program

Overview

During this century, this Nation has been involved in two world wars and two major conflicts. During each of those four periods of war, millions of Americans have served in our Armed Forces.

There are now 29.8 million veterans of service in the Nation's Armed Forces, of whom 26.2 million are veterans of wartime service. In recognition of the sacrifices made and hardships incurred by the Nation's veterans and of their invaluable service to our national defense and security, veterans' programs serve a wide range of purposes. Those purposes include compensating those who have suffered injury or disease in line of duty for their resultant loss of earning capacity, providing them with the best possible health care and rehabilitation services, and helping to meet the financial, educational training, and certain other essential needs of the surviving dependents of those who died in service or as the result of service-connected causes. Readjustment assistance—primarily educational benefits under the GI Bill for wartime veterans and employment assistance—is provided for the purposes of compensating veterans for the losses of educational and employment opportunities during their active-duty service and helping them make a successful, productive readjustment to civilian life. VA home-loan guaranties are provided to assist veterans to become homeowners. The VA pension [1] program is intended to provide income assistance to needy, non-service-connected disabled and elderly wartime veterans and the needy survivors of wartime veterans for the purpose of affording them a reasonable measure of security so they can live their lives in dignity.

Pension benefits are awarded, not because of the needs arising directly from military service, but because the Nation owes a special obligation to those persons who took up arms in its defense during time of war. Pensions have been granted on the basis of some specified period of service plus other qualifications such as indigence, inability to perform manual labor, disability in some degree incurred after the termination of the war, the attainment of a certain age, or various combinations of those elements.

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[1] The term "pension" means a monthly payment made by the Administrator of Veterans' Affairs to wartime veterans because of age, service, or disability not incurred or aggravated in line of duty in active service, or to a surviving spouse or child of a wartime veteran whose death was not due to disability resulting from active military service. It is important to distinguish the meaning of "pension" as used in title 38, United States Code, in reference to VA programs, from the more common meaning of an employees' retirement program, usually funded by the employer's or the employee's—or the employers' and employees'—monetary contributions and requiring several years, often 20 or more, of employment as a condition of eligibility for benefits.

Prior to World War II, pensions were neither provided nor promised at the time the war was being fought. In fact, from the Revolutionary War through the Spanish-American War, pension laws applied only to veterans of a specific war and were enacted many years after the war ended when the veteran population was advanced in age and reduced in numbers. However, the period between the termination of the war and the enactment of pension legislation generally grew progressively shorter.

The main concern of pension legislation has been to keep wartime veterans and their survivors from destitution. Even where financial need was not required to be shown, it was assumed to exist in the cases of most beneficiaries by reason of old age. (Where entitlement to pension is based solely on service for a specified length of time during a particular wartime period, the pension is referred to as a "service pension".)

Origins of the non-service-connected pension program

The present pension program for wartime veterans had its origin in the conditions during and following wars in which this Nation has been engaged.

Pre-Revolutionary War period

In 1636, the first "pension law" in the colonies was enacted by the Plymouth colony. That law provided that anyone sent out as a soldier who returned injured would be maintained by the colony during the rest of his life. That promise of relief to the colony's soldiers is distinguishable from current veterans' pension programs because it was conditioned on a requirement that beneficiaries have a form of service-connected disability. Nevertheless, it established the precedent that veterans with wartime service are a special class to be treated differently from the general population.

Later, other colonies enacted laws for the relief of disabled soldiers. Those laws contained elements of both service-connected disability compensation and non-service-connected pension as those programs exist today. The veteran had to have incurred a disabling injury—a "compensation-type" requirement—and he had to be indigent and incapable of earning a livelihood—"pension-type" requirements.

Revolutionary War

The compensation and pension programs for Revolutionary War veterans consisted of two parts. First, a law enacted by the Continental Congress in 1776, promised a "pension"—more like present compensation benefits—of half pay for life or during a period of disability to any officer, soldier, or sailor who should lose a limb or be so disabled in the service of the Nation as to render him incapable of earning a livelihood. This law became the basis for the Revolutionary War Pension Act, enacted in 1792.

In the Act of March 18, 1818, the Congress authorized pensions for needy Revolutionary War veterans who had served to the end of the war or for a period of at least 9 months. The rationale for this law was that no veterans of the fight for independence should be forced to seek uncertain charity.

The Act of June 7, 1832, expanded that program to provide full pay for life to all veterans of the Revolutionary War who had served a

total of at least 2 years and proportionate payments for life to those who had served more than 6 months. There was no requirement of need or disability, but all those who were eligible were persons of advanced age. In 1836, benefits were extended to the widows of men who had been eligible under the 1832 Act. Originally, marriage was required before the end of the veteran's last period of service, but later amendments liberalized this and other eligibility requirements.

During the lifetimes of Revolutionary War veterans, there were no general income security programs nor were there significant private income security programs or private pension plans. This was an age of extended families, and the aged and disabled members of a family were typically taken care of within the family circle. The alternative to family care was the almshouse. Thus, at a time when there was no federally-funded system of income security for any other segment of the population, the pension program for wartime veterans benefited a select group within the general population and established the principle that the veteran who performed military or naval service honorably in time of war deserved special aid when in need, without the connotation or hardships of charitable relief.

War of 1812, the Mexican War, and the Indian Wars

Pension legislation for veterans (and their survivors) of the War of 1812, the Mexican War, and the Indian Wars followed much the same pattern as the Revolutionary War pension program.

The Act of February 14, 1871, using the Act of June 7, 1832, as precedent, established a War of 1812 veterans' pension for those who had served for at least 60 days during that war. Eventually the service requirement was reduced to 14 days.

The Act of January 29, 1887, granted a pension to Mexican War (1846 to 1848) veterans who were honorably discharged and either had served for 60 days in Mexico, or on the coasts or frontier thereof, or en route thereto, or had been in combat. Widows were also provided for by that Act. In order to be eligible, the veteran was required to be at least 62 years of age or to have a disability which, had it been service-connected, would have been compensable. Liberalizing legislation was enacted in 1912 granting a service pension to all those who had served 60 days or more in the military or naval service of the United States in the war with Mexico and who were honorably discharged from such service.

The Act of July 27, 1892, granted a service pension to those who had served at least 30 days in specified Indian campaigns. Later acts added other 19th century Indian campaigns and provided higher rates for those who met certain standards of need.

Civil War

Some 2,200,000 soldiers served in the Union Army during the Civil War. This was more than the total number of American soldiers who had fought in all of the Nation's wars up until that time. The number of persons potentially eligible for a pension and the amount of money required to fund a pension program for them were of a much higher magnitude than ever before.

Twenty-five years after the end of the Civil War, the Act of June 27, 1890, provided pensions to those who served 90 days or more in the

Union forces during the Civil War and were honorably discharged, if they had a permanent non-service-connected disability sufficient in severity to preclude them from earning a living by manual labor. That pension was payable despite the fact that the veteran might have been earning a living from other kinds of employment. The Civil War pension was enacted much sooner after the end of the conflict than pensions for veterans with service in the Nation's earlier wars had been. Pensions for widows were also provided by the 1890 law without regard to the cause of the veteran's death. The Act of February 6, 1907, provided for pension at age 62, without regard to disability, for Civil War veterans. Higher rates based on length of service were provided by the Act of May 11, 1912.

Spanish-American War

The first pension law after the Spanish-American War—enacted just 16 years after the end of the war—was for the benefit of widows and surviving children of veterans who died of non-service-connected causes. Under that law, the Act of July 16, 1918, the widow's marriage to the veteran had to have taken place prior to the enactment date of the Act for the widow to be entitled to such a pension. Two years later, the Act of June 5, 1920, provided pensions to veterans of 90 or more days service in the war with Spain who had non-service-connected disabilities which rendered them unable to support themselves through "normal labor". Pension was also provided without the necessity of disability to veterans who attained specific ages.

The Act of June 17, 1957 (Public Law 85–56), removed all requirements other than 90 or more days of service for veterans of the Spanish-American War to receive the maximum amount of pension. Surviving spouses and children of Spanish-American War veterans who served 90 days or more, or were discharged for disability, were also provided entitlement to pension benefits.

There were various reasons for establishing pension benefits without regard to income for veterans of the Spanish-American War and their survivors. Spanish-American War veterans were not provided with insurance benefits, hospitalization, adequate medical care, and vocational rehabilitation, as were veterans of World War I and more recent periods of war. Also, compared to later periods of war, there were very few Spanish-American War veterans alive when the 1957 Act was passed.

Summary—Revolutionary War through Spanish-American War

During the period from the Revolutionary War to the Spanish-American War a definite pattern developed. After each war, very little was done by the Federal Government to help veterans of those early wars readjust to civilian life; and no attention was given to medical care for or rehabilitation of those disabled during their service. The veterans' entitlement to pension was granted years later when the veteran population had become very elderly. Veterans' widows were provided for without specific regard to need or disability. On the surface, it does not appear that need was always a criterion in establishing eligibility. However, the veterans receiving such "service" pensions were generally unable to provide for themselves because of advanced age, and social programs, such as social security and workers' compen-

sation, were not available. Likewise, widows often had no other potential sources of support. Therefore, need, although unstated, seems clearly to have been an inherent basis of the early pension laws; they were intended to relieve the problems of disability and destitution among aging wartime veterans and their survivors.

World War I

In 1917, after the United States entered World War I, Congress realized that millions of veterans would return at the end of the war and that many would be in need of some sort of aid. Thus, a new system of veterans' benefits was enacted into law on October 6, 1917, as an amendment to the War Risk Insurance Act. The new law provided five classes of benefits: (1) support of the dependents of members of the Armed Forces during service; (2) low cost insurance on a voluntary basis; (3) compensation for the war disabled and the survivors of those who died; (4) vocational rehabilitation for the disabled in need of such training; and (5) medical and hospital care for those with service-connected disabilities. That law did not provide a pension for veterans with non-service-connected disabilities.

A major objective of the War Risk Insurance Act was to provide adequate aid to the serviceman and his family both during and after service and thus avoid the necessity for non-service-connected pensions. Thus, Congress tried to anticipate and forestall the direction taken after previous wars.

After the passage of the amendment to the War Risk Insurance Act and especially during the years 1925 to 1930, many World War I veterans complained of disabilities which they believed were the results of their service. Because of the time lapse, however, there was little possibility that they could establish service connection for their disabilities and thus become eligible for compensation. Congress was besieged with petitions and demands that something be done. After lengthy debate and the veto of one bill by President Hoover, a law was finally enacted granting monetary aid for honorably discharged World War I veterans whose disabilities were not acquired in service during World War I.

That law, Public No. 522, 71st Congress (July 3, 1930), provided a pension only for those World War I veterans who, because of lack of income, were exempt from Federal income taxation for the year preceding the filing of their pension applications. The rates payable varied according to ratings of 25 percent, 50 percent, 75 percent, and 100 percent of the veterans' non-service-connected permanent disabilities. This was the first law providing pension benefits for veterans with non-service-connected disabilities with respect to which the advanced age of the veterans to be benefited and their declining numbers were not implicit factors in its enactment.

During the worst part of the Great Depression, Congress passed the Economy Act of 1933 (Public No. 2, 73d Congress, March 20, 1933), which canceled all previously established benefits for veterans of World War I and substituted instead a system of veterans' benefits established by Executive order. The new system drastically curtailed all benefits, reduced pension payments to those with total disability, sharply reduced the payments going to those with service-connected

disabilities, removed many veterans from the rolls altogether, and cut back other benefits. Some liberalizations were made in the Executive orders during the following 2-year period; and by the end of 2 years, all former benefit programs, with the exception of non-service-connected disability pension for veterans with less than total disabilities, were substantially restored by Congress. Pension eligibility was limited to veterans suffering from total disability whose annual countable incomes were below specified limits—$1,000 for single veterans and $2,500 for married veterans.

The first bill to provide pension for widows and surviving children of World War I veterans who died of non-service-connected causes was introduced in Congress in 1932, but failed to pass. The same legislation was reintroduced and enacted in 1934 (Public No. 484, 73d Congress). That law provided for the payment of benefits to a widow, child, or children of a deceased World War I veteran who, while receiving or entitled to receive pension, compensation or retirement pay for a 30-or-more percent service-connected disability, died from non-service-connected causes not the result of his own misconduct, but only if such widow or child was exempt from Federal income taxation for the previous year.

In 1935, the first broad-scale Federal legislation providing a measure of income security for retired and unemployed persons was enacted in the Social Security Act. That law established two social insurance programs on a national scale to help meet the risks of old age and unemployment: A Federal system of old-age benefits for retired workers who had been employed in industry and commerce and a Federal-State system of unemployment insurance.

World War II

The pension program which emerged in 1935, under the Economy Act of 1933, applied to all veterans with service after April 21, 1898, and became the basis of benefits for World War II veterans.

In 1944, Public Law 78–313 was enacted in order to include World War II veteran, on the same basis as World War I veterans, within the coverage of the regulations providing wartime veterans with compensation, pension, and other benefits administered by the Veterans' Administration. That law also increased the rates of pension to $50 per month for those who were permanently and totally disabled and to $60 per month for those so disabled who either had been in receipt of pension for at least 10 years or were 65 years of age or older.

In the same year, Public Law 78–312 provided pensions to widows of World War II veterans. However, eligibility was limited to widows of those World War II veterans whose deaths were not service connected but who at the time of death were receiving or entitled to receive compensation, pension, or retirement pay for a disability of 30 percent or more directly incurred or aggravated by service. These requirements were liberalized in 1944 by Public Law 78–483 to include needy widows of all wartime veterans whose deaths were not service connected. During World War II, Congress also enacted comprehensive legislation—the "GI Bill of Rights"—to alleviate the problems of readjustment among the millions of World War II veterans who would be re-entering civilian life at the war's end.

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Korean conflict

On May 11, 1951, less than a year after the outbreak of the Korean conflict, Congress enacted legislation (Public Law 82–28) extending the then-current pension program (and certain other benefits) to veterans of the Korean conflict and their survivors.

In 1959, Congress enacted a new need-based pension program under the Veterans' Pension Act of 1959 (Public Law 86–211) for World War I, World War II, and Korean conflict veterans, and the survivors of veterans of those periods of war. The 1959 Act established the basis of the existing pension program, which has come to be known as the "current law" program. The program in existence prior to the enactment of the 1959 Act became known as "old law"; and provisions in that Act permitted beneficiaries to continue receiving pension under "old law" if they so desired.

Vietnam era

Public Law 90–77, enacted August 31, 1967, extended eligibility for pension under the program established by the Veterans' Pension Act of 1959 (Public Law 86–211) to Vietnam-era veterans who served after August 4, 1964, and to their survivors, with the same eligibility requirements and the same benefits as veterans of World War I, World War II, and the Korean conflict and their survivors. The end of the Vietnam era was declared to be May 7, 1975, by Presidential proclamation of the same date.

The following tables show the number of pension beneficiaries in March 1978, by period of service:

TABLE 1.—PENSION BENEFICIARIES BY PERIOD OF SERVICE—WORLD WAR I AND LATER PERIODS OF WAR, MARCH 1978

Entitlement	Veterans	Survivors		
		Total	Widows/ widowers	Children (both dependents and survivors)
Public Law 86–211	946, 873	1, 612, 943	909, 899	703, 044
Old law	64, 105	76, 292	74, 344	1, 948
Total	1, 010, 978	1, 689, 235	984, 243	704, 992
World War I:				
Public Law 86–211	200, 312	493, 694	470, 958	22, 736
Old law	56, 253	59, 401	58, 780	621
Total	256, 565	553, 095	529, 738	23, 357
World War II:				
Public Law 86–211	661, 220	811, 844	388, 092	423, 752
Old law	6, 834	2, 581	2, 509	72
Total	668, 054	814, 425	390, 601	423, 824
Korean conflict:				
Public Law 86–211	72, 264	240, 678	35, 567	205, 111
Old law	814	50	42	8
Total	73, 078	240, 728	35, 609	205, 119
Vietnam era: Public Law 86–211	12, 663	62, 196	10, 874	51, 322

Source: Veterans' Administration.

TABLE 2.—PENSION BENEFICIARIES BY PERIOD OF SERVICE—PERIODS OF WAR BEFORE WORLD WAR I, MARCH 1978

Entitlement	Veterans	Survivors		
		Total	Widows/ widowers	Children
Spanish-American War:				
Public Law 86-211	147	3,910	3,809	101
Prior law	204	13,942	12,854	1,088
Total	351	17,852	16,663	1,189
Mexican Border Service: Public Law 86-211	267	621	599	22
Indian Wars: Prior law		56	45	11
Civil War: Prior law		262	114	148

Source: Veterans' Administration.

The Development of the Current Program

The Veterans' Pension Act of 1959 (Public Law 86-211)

From 1933 until 1959, the veterans' pension program consisted of "all-or-nothing" determinations of eligibility. Persons whose incomes did not exceed the specified income limitations received benefits, and the benefits payable to persons with income close to the income limitations were identical to benefits payable to those who had no income or very little income. If one's income exceeded the income limitation by as little as $1, pension benefits were terminated and one's aggregate income was drastically reduced.

In order to make the pension program more responsive to the needs of the recipients, steps to correct the inequities and deficiencies inherent in the "all-or-nothing" pension structure were necessary.

In 1955, President Eisenhower established a President's Commission on Veterans' Pensions and appointed General Omar Bradley as Chairman. In April 1956, the Commission—which had become known as the Bradley Commission—published its findings and recommendations in a comprehensive report entitled *Veterans' Benefits in the United States.*

With respect to pension, the Commission's recommendations were as follows:

> The Commission recommends that the veterans' pension benefits be coordinated with those payable under OASI (Old Age and Survivors Insurance (social security)), which now covers 9 out of 10 veterans and nonveterans. It is proposed that this be done by maintaining a separate veterans' pension program, but changing the present eligibility standards to take account of all income, including OASI but not public-assistance payments, as resources in determining need for a pension. Accordingly, veterans' pensions would supplement the income of the eligible beneficiaries from OASI and other sources up to a guaranteed minimum.
>
> The Commission believes that the objective of the veterans' pension program should be to provide the greatest assistance to those who are most in need. At present the program does not always accomplish this. Current limits on outside income operate on an inequitable all-or-nothing basis and discourage productive

work on the part of pensioners approaching these limits. As measures of need, present income limits are too high and result in payment of tax-free pensions to persons who are not in genuine need.

The Commission recommends that in place of the present limits on outside income, a realistic test of need based on the standards carefully worked out under the Federal-State public-assistance programs be used. It also recommends that the pension benefit should be on a sliding scale with only a partial offset for earned income, so that pensioners will have an incentive to work and will not lose their entire pension because they earn a small amount. In view of the basic character of the OASI system, the gratuitous pension benefits should not exceed comparable benefits which will be paid by OASI when it reaches reasonable maturity.

The Commission also recommends that other eligibility conditions be adjusted to shift emphasis toward providing assistance for those who need it most and doing so in the most constructive fashion. In keeping with this policy, a disability of at least 30 percent should be required at ages below 70, and procedural arrangements should be established so that applicants for benefits will be served by the Federal-State Employment and Vocational Rehabilitation Services. Only those found incapable of rehabilitation and unemployable should be eligible for a pension bringing their income up to the level underwritten by the Government.

Benefits should take account of family responsibilities, and resources available should likewise be determined on a family basis. In line with present Federal-State public assistance standards, a guaranteed income of, for example, $70 per month for a single veteran and $105 per month for a veteran with a wife, would currently meet the stated criteria for the majority of cases. Rates and limits for widows and orphans should be correspondingly adjusted. (Part I, "Highlights of the Commission's Findings and Recommendations", pages 18–19.)

Further investigation and research by the Congress, together with the recommendations made by the Bradley Commission, led to the enactment of the Veterans' Pension Act of 1959 (Public Law 86–211) which, with substantial amendments discussed below, is the basis for the need-based pension program in existence at the present time. In that law, pension entitlement was adjusted to correspond with the individual recipient's other income. A three-tier structure replaced the one-tier benefit in order to provide a measure of responsiveness to the varying degrees of need of individual recipients.

Thus, enactment of Public Law 86–211, with its graduated levels of pension benefits, gave expression to the philosophy that non-service-connected pension entitlement should be based on the needs of individual recipients. That law was a major advance in the design of a pension program for wartime veterans and survivors truly responsive to need.

In 1964, anticipating an increase in social security benefits, Congress amended the pension law as revised by authorizing an exclusion of 10 percent of all payments to an individual under public or private retirement, annuity, endowment, or similar plans or programs in de-

termining the annual income of the pensioner. Thus, in addition to a general rate increase, the 10-percent exclusion provided for in Public Law 88–664 generally assured that no individual's pension benefits would be reduced because of the expected social security increase in that year. At the same time Congress also created another exclusion from countable income—the exclusion of all of a veteran's spouse's earned income or $1,200, whichever was the greater.

In 1967, Congress enacted a cost-of-living pension rate increase of 5.4 percent in Public Law 90–77. The following year, 1968, in Public Law 90–275, Congress again increased pension rates and also provided for a $200 increase in the maximum annual income limitations to mitigate against prospective terminations from pension which would occur because of the 13-percent increase in social security benefits that year. The same Act replaced the three-level system of pension rates with a multilevel increment system. Under the previous three-level system, a slight increase in outside income often could result in a disproportionate decrease in a veteran's pension. The enactment of a benefit schedule in which the pension amount was reduced by as many as 20 incremental steps for each $100 of annual income was designed to permit a more orderly and gradual reduction in monthly benefits whenever there was an increase in outside income.

In 1970, in enacting Public Law 91–588, Congress again diminished projected adverse effects on pensioners because of that year's 15-percent increase in social security benefits. It raised the current maximum annual income limitations by $300 and increased the rates by 9.5 percent.

Under early pension laws, the structure of the pension system was such that a small increase in outside annual income could, at certain levels, result in a sharp drop in pension or in a person being dropped from the pension rolls completely. For most pensioners, whose income was not close to such cutoff points, however, outside income could increase substantially with no effect on pension payments or eligibility. When the program, in the interests of equity, was restructured so as to be more sensitive to increases in outside income, that is, more clearly attuned to actual need, another problem arose which became particularly acute. Whenever there were cost-of-living increases in social security, or other similar retirement benefits, which were not offset by pension rate increases of the same or a greater amount, the individual's pension was reduced. Thus, veterans complained that whatever social security increase Congress gave with one hand it took back in reduced pension with the other. The reduction in pension was sometimes greater than the increase in social security benefits, producing a decline in the aggregate income of the veteran or survivor.

In Public Law 92–198, enacted in 1971 in response to social security increases that year, Congress increased the pension rates and the maximum annual countable income limitations and adopted rate-decrement-income limitation formulas for establishing the pension rates. The formulas, based on the incremental-step benefit schedules, provided a means by which pension benefits could be calculated to the penny and were intended to prevent the net loss of aggregate income for any pensioner who continued to qualify for a pension and who received an increase in outside income. Under the formula approach, the monthly benefit is computed by reducing the maximum monthly rate by a spec-

ified number of cents for each dollar of an individual's annual countable income which exceeds the maximum annual countable income level for the applicable step.

Since 1971, the enactment by Congress of a pension rate increase has meant an increase in the maximum monthly rates and annual countable income limitations by the specified percentage and adjustments in the formulas so that the less-than-maximum rates would reflect the increase.

Because of the July 1972 social security increase, approximately 20,000 pensioners—14,200 veterans and 5,800 survivors—were scheduled to be dropped from the pension rolls on January 1, 1973, the effective date of annual redeterminations of entitlement to pension benefits. Concerned about that situation, the Committee on Veterans' Affairs held hearings on September 12, 1972, to consider legislation to ameliorate the adverse impact of social security increases on pensioners and to adjust for continuing inflation. Subsequently, the Committee unanimously ordered reported S. 4006, which would have increased maximum annual income limitations by $400—the approximate amount of the average social security increase—and would have increased the base pension rates by about 8 percent.

The measure unanimously passed the Senate in the closing days of the session on October 11, 1972, but the House was unable to consider pension legislation prior to sine die adjournment.

The subsequent terminations of many persons from the pension rolls in January 1973, as a result of the social security cost-of-living increase which was effective the previous July, focused attention on the pension structure. Although rate increases and increases in the annual income limitations appeared essential to prevent continuing inflation from eroding the purchasing power of pension benefits and to prevent eligibility terminations, many in Congress and in the Administration recognized that the practice of frequent adjustments in the benefit schedule was creating distortions in the equitable structure envisioned by public Law 86–211 and tended to spread the limited resources available for the pension program more and more thinly. Persons with little or no other income received inadequate benefits while increases in the income limitations tended to result in the payment of very small benefits to large numbers of persons in higher income categories. Each successive rate increase and income limitation adjustment compounded this distortion and led to the anomalous situation, which prevails today, in which substantial numbers of persons with incomes well above the poverty threshold receive benefits, while many other pensioners must seek assistance from social welfare programs such as Supplemental Security Income and food stamps merely to meet their subsistence needs.

This situation has led to the effort to bring about major reform, an effort which has now continued for 5 years.

Previous Pension-Reform Measure—S. 2635 and Its Background

93d Congress

During the 93d Congress, the Committee undertook a comprehensive review of the pension program. In testimony before the Subcom-

mittee on Compensation and Pensions on June 18, 1973, representatives of the VA asserted that there were a number of "inconsistencies, inequities, and anomalies" in the present pension system. They advocated a thorough examination and complete revision of the system which, they asserted, could be accomplished quickly, but the VA did not offer a formal draft of legislation for that purpose.

Following the June 18, 1973 hearing, staff members of the Senate and House Committees met with representatives of the Administration in an attempt to reduce the suggestions in the testimony to a more concrete form. At that point it became obvious that there was a serious lack of the pertinent data which Congress would need to make rational determinations as to the shape any new pension system should take. In general, the information was not forthcoming during 1973. Therefore, while agreeing to investigate further the entire pension system, the Committee concluded that action was needed on an immediate cost-of-living measure and reported legislation (S. 275) to accomplish it.

S. 275 was ultimately enacted as Public Law 93–177 and provided, effective January 1, 1974, for a 10-percent increase in the rates.

In signing Public Law 93–177, on December 6, 1973, the President stated:

> While this bill is a step in the right direction, more can be done—and should be done. As I mentioned in my message to the Congress on national legislative goals on September 10, 1973, full reform of the Veterans' Administration pension program is necessary. The program is currently fraught with inconsistencies, inequities, and anomalies which cannot be corrected unless the entire framework of the program is restructured.
>
> This administration regards the following principles as vital to a realistic and equitable VA pension program:
>
> VA pensioners should have some regularized way of receiving cost-of-living adjustments in VA pension payments tied to automatic increases now available to social security recipients.
>
> The VA pension program should be restructured to assure that additional income flows to the neediest pensioners. This objective would involve raising VA payments to those pensioners who receive less total income than adult welfare recipients under recent amendments to the Social Security Act. In addition, a family's total income should be considered in determining the amount of pension needed.
>
> Veterans and widows should be treated equally with regard to income and pension payments.

The President in his message to Congress on veterans on January 28, 1974, repeated the foregoing and stated that he would propose the necessary legislation.

On March 15, 1974, the Administration submitted a formal draft legislative proposal. The transmittal letter stated:

> The enclosed draft measure would (1) fill the gap between the resources available to a veteran and his dependents and a

national minimum standard of need; (2) treat veterans and widows equally with regard to income and benefit amount; (3) eliminate the inequities arising from exclusions of income—consideration of family income as a whole; (4) contain an automatic cost-of-living adjustment working simultaneously with that applicable to social security and eliminate the lag in adjusting pension for increase in income; (5) provide benefits which guarantee a minimum income of $166 per month for a single person and $249 per month for a person with one dependent; and (6) provide a hold-harmless provision to permit present recipients of pension to continue receiving benefits under the present provisions of law with a 4-percent rate increase and thereafter, automatic cost-of-living increases.

Thereafter, the Committee intensified its efforts to obtain relevant information from the VA with which to assess the full impact of that proposal.

It soon became apparent that the VA lacked the capability to provide detailed, up-to-date information in a timely manner. Further lacking was sufficient analytical staffing and an advanced computer model capable of making an adequate analysis of the VA proposal, let alone the possible variations being considered by the Committee. These inadequacies continued throughout 1973 and 1974. A series of six memoranda were exchanged with the VA during those years. Each memorandum resulted in delays in supplying the necessary information, some of which was submitted months beyond the Committee's requested deadlines.

From information then currently available to the Committee, however, it was apparent that the actual proposals made by the VA would be unduly restrictive and unacceptable in operation. Few of the veterans or surviving spouses in need of pension could qualify under the new system proposed by the Veterans' Administration. For example, if that proposed pension system had been applied to the population of veterans and surviving spouses then receiving VA pensions, almost two-thirds would have been ineligible for pension benefits. It was evident that variations had to be considered and additional information was necessary before the Committee could proceed with pension restructuring.

Public Law 93–527

In the meantime, it was necessary to proceed with an interim cost-of-living measure in order to protect VA pensioners from the continued toll of inflation. Thus, Congress enacted S. 4040, the Veterans and Survivors Pension Adjustment Act of 1974, as Public Law 93–527. In addition to providing an average 12-percent increase in the pension rates and a $400 increase in the maximum annual income limitations, Public Law 93–527 also directed the Administrator of Veterans' Affairs to carry out an original study of the needs and problems of veterans and their widows 72 years of age and older. The study was to include a profile of the income characteristics of such veterans and their widows describing the proportion and amount of such income from all sources, and the average cost for all necessities such as rent,

food, medical care, and other items. The study was also to evaluate the adequacy of benefits for and the expected mortality rates of such pensioners.

The law further directed that a report of the results be furnished the President and the Congress together with any recommendations for legislative or administrative action to improve the present program of pension benefits for such veterans and widows.

Public Law 93–527 also provided that "in no event shall the monthly rate of pension be less than $5." This provision of a "minimum pension" appeared necessary because there were persons whose countable nonpension income did not exceed the income limitations, but for whom the application of the formula would yield very small amounts of pension or in some cases none at all.

In addition, on November 11, 1974, then Chairman Vance Hartke sent a detailed letter to then Administrator Roudebush noting the many problems the Committee had encountered in obtaining adequate accurate information and expressing particular concern that an adequate computer simulation model be developed which could predict the operation and effect of various alternative pension reform proposals.

That letter noted problems in obtaining information on a timely basis and cited a study by the Congressional Research Service, conducted at Committee request, in which it was concluded that the chief problems of the VA in responding to Committee inquiries concerning pension restructuring were:

> Inadequate analytical staff in the Veterans' Administration devoted to VA pension reform effort (a potentially solvable problem).
>
> Inadequate data (only partly amenable to solution).
>
> Competing computer models, which are by themselves only partially capable of answering Committee concerns.
>
> A tangled administrative structure which now seems incapable of resolving these problems and making timely responses to Committee inquiry.

In response, Administrator Roudebush indicated that he had directed the VA to proceed rapidly with the development of a more sophisticated computer simulation model capable of producing information long desired by the Committee.

94th Congress

On April 1, 1975, the Administrator informed the Committee that the new computer simulation model was operational. The Committee then requested considerable information to be processed by the computer simulation model in a series of memoranda dated April 11, May 19, June 3, and June 25. Generally, the bulk of the information requested was promptly supplied by the VA with the material requested in the last memorandum provided by July 15, 1975.

On July 22, 1975, the Veterans' Administration transmitted its "Study of the Needs of Older Veterans and Widows", as required by Public Law 93–527.

Graphic evidence that the current pension system is not fulfilling its objectives can be found in that study of the needs of older veterans and widows. The raw data produced by the study has been of great value to the Committee. The data revealed, for example, that large

numbers of veterans and widows had incomes below the poverty threshold; 30 percent of the veterans and nearly 37 percent of the widows interviewed reported they could not afford all the food they need; 25.1 percent of the veterans and 20.9 percent of the widows could not afford to pay for all the medical attention they need; and nearly 36 percent reported problems concerning adequate housing.

This study and the continued exposure of anomalies and inequities in the present pension program combined to argue forcefully and persuasively for fundamental restructuring.

The Committee then formulated S. 2635, introduced by then Chairman Hartke and cosponsored by most members of the Committee. The VA, however, did not support S. 2635. It testified that the bill incorporated many of the concepts contained in its draft proposal submitted the previous year, but it opposed the bill principally for the reason that the 8-percent cost-of-living increases in titles II and IV of the bill as reported were not in keeping with the Administration's policy of "holding the line" at 5 percent. On December 15, 1975, S. 2635 passed the Senate unanimously but it was not acted upon by the House and died with the adjournment of the 94th Congress.

S. 2635, the proposed "Veterans and Survivors Pension Reform Act of 1975", generally, would have:

—Adopted income standards for all eligible veterans and surviving spouses of $2,700 for a veteran without dependent family members and $3,900 for a veteran with one dependent family member, reduced dollar for dollar by the other income available to a pensioner;

—Reduced significantly the number of income exclusions permitted under current law;

—Provided for automatic cost-of-living increases based on annual increases in the Consumer Price Index.

In 1976, the Senate considered another pension bill, H.R. 14298, which had passed the House June 21, 1976, and basically provided for a cost-of-living increase in pension benefit levels. On August 4, 1976, the Senate voted to amend H.R. 14298 by substituting the provisions of S. 2635. On September 9, 1976, the House amended H.R. 14298 to contain its original text and it was subsequently signed into law as Public Law 94–432.

Before final passage, however, H.R. 14298 was also amended to require a comprehensive study of the pension program. That amendment, section 404 of Public Law 94–432, provides as follows:

> SEC. 404. (a) The Congress finds and declares that the pension program for non-service-connected disability or death, authorized in chapter 15 of title 38, United States Code, and administered by the Veterans' Administration—
>
> (1) does not provide sufficient assistance to meet the needs of some eligible veterans and survivors;
>
> (2) has developed some inconsistencies, inequities, and anomalies which prevent it from operating in the most efficient and equitable manner; and
>
> (3) subjects many pensioners annually to reductions in their pensions.
>
> The Congress further finds and declares that it lacks sufficient long-range information as to actual and anticipated financial

characteristics of potential pensioners (and their families) upon which to estimate costs of existing alternative pension programs.

(b) No later than October 1, 1977, the Administrator of Veterans' Affairs shall submit a report to Congress and the President. The report shall contain the findings and recommendations of a comprehensive investigation, analysis, and evaluation of existing and alternative non-service-connected pension programs, and shall include, but not be limited to, the following:

(1) Income characteristics of veterans and survivors currently in receipt of non-service-connected pension.

(2) Actual and anticipated long-term financial characteristics of pensioners including those veterans and survivors (and their families) who may be potentially eligible for benefits under the non-service-connected pension program during the next 25 years.

(3) Identification and analysis of existing inequities, anomalies, and inconsistencies contained in the current non-service-connected pension program.

(4) Current and proposed income exclusions.

(5) Particular problems and needs of catastrophically disabled non-service-connected pensioners.

(6) Alternative proposals which—

(A) assure a level of income for eligible veterans at or above the national minimum standard of need;

(B) treat similarly circumstanced pensioners alike; and

(C) provide the greatest amount of assistance to those with the greatest amount of need.

(c) On the basis of the investigation, analysis, and evaluation required to be made in subsection (b), the report shall identify alternative courses of legislative or administrative action (including proposed legislation) and long-range cost estimates therefor which, in the judgment of the Administrator, would result in a more equitable non-service-connected pension program.

Preparation and Introduction of S. 2384

In the 95th Congress, Senator Alan Cranston succeeded Senator Hartke as Chairman of the Veterans' Affairs Committee. On March 15, 1977, the Committee met in executive session to consider its recommendations to the Senate Budget Committee for the fiscal year 1978 Congressional budget and established as a major priority the enactment during the 95th Congress of pension restructuring legislation. Much time had passed since the introduction of S. 2635, and, while the general structure of the program that would have been established under that measure was clearly equitable, the Committee recognized that the legislation could be substantially improved. Drafts of legislation based on the principles of S. 2635 but with substantially increased benefit levels and other modifications were prepared and submitted to the Congressional Budget Office and the Office of Management and Budget for development of cost estimates for the drafts. The Committee expected to receive the data contained in the VA pension report, due to be submitted to the Congress on October 1, 1977, as well as the

administration's recommendations, to assist in putting the draft legislation in final form. However, informal communications from the VA in November 1977, indicated that the report might not be submitted to the Congress until as late as January or February of 1978. In order to provide ample time for review by the administration, the veterans' service organizations, and other interested parties prior to hearings planned for February 1978, the Committee decided to prepare the bill for introduction before the end of the first session of the 95th Congress.

In the meantime it had become evident that a reform measure could not be enacted with an effective date in fiscal year 1978. Therefore, pending achievement of comprehensive reform, Congress passed H.R. 7345, a bill to provide a cost-of-living increase of approximately 6.5 percent in the pension rates and the annual income limitations. The Committee, in its report (S. Rept. No. 95–374) accompanying H.R. 7345, dated July 29, 1977, reiterated its commitment to the achievement of equitable and adequate pension-restructuring legislation. H.R. 7345 was signed into law on December 2, 1977, as Public Law 95–204.

On December 15, 1977, the Chairman introduced S. 2384, the proposed "Veterans' and Survivors' Income Security Act", with the cosponsorship of all members of the Committee and Senator Williams. The major provisions of the bill as introduced were designed to:

First, establish a new program of pension benefits payable monthly to wartime veterans who are permanently and totally disabled by reason of non-service-connected disability or who are 65 or over, with the following annual rates, reduced by the amount of the veteran's annual income, or by the income of a dependent spouse or child which is reasonably available to the veteran:

Veteran without dependent spouse or child	$3,200
Veteran with one dependent (spouse or child)	4,128
Veteran in need of regular aid and attendance without dependents	5,299
Veteran in need of regular aid and attendance with one dependent	6,227
Veteran permanently housebound without dependents	3,976
Veteran permanently housebound with one dependent	4,904
Increase for each additional dependent child	660

Second, establish a new program of pension benefits payable monthly to surviving spouses of wartime veterans, with annual rates for permanently and totally disabled surviving spouses and those who are 65 or over, equal to those applicable to veterans, with rates for surviving spouses in need of regular aid and attendance equal to those for veterans, and with an increase for each additional dependent child equal to that payable to a veteran for a dependent child. The applicable annual rates, reduced by the amount of the surviving spouse's annual income, were as follows:

Permanently and totally disabled surviving spouse, or one who is age 65 or over	$3,200
Permanently and totally disabled (or age 65 or over) surviving spouse with one dependent child	4,128
Surviving spouse with one child age 6 or under, or a helpless child	4,128
Permanently and totally disabled (or age 65 or over) surviving spouse in need of regular aid and attendance	5,299
Permanently and totally disabled (or age 65 or over) surviving spouse in need of regular aid and attendance with one dependent child	6,227
Increase for each additional dependent child after the first	660
Other surviving spouse without dependent child	2,144
Other surviving spouse with one dependent child	2,766

Third, require that all income from whatever source derived be counted, for purposes of determining basic income eligibility and the amount of pension payable, subject to the following exclusions:

Payments under chapters 11, 13, and 15, compensation for service-connected disability or death, dependency and indemnity compensation for service-connected deaths, and pension for non-service-connected disability or death, respectively;

Donations from private or public relief or welfare organizations;

Amounts equal to amounts paid for last illness and burial expenses for a veteran;

Amounts equal to amounts paid for last illness and burial expenses for a spouse;

Fire insurance policy proceeds;

Profit from the sale of real or personal property other than in the course of a business;

Amounts in joint accounts acquired by reason of the death of the other co-owner;

$780 of earned income plus one-half of all earned income in excess of $780; and

Amounts equal to amounts exceeding $100 paid out for unreimbursed medical expenditures for the preceding year.

Fourth, require net worth determinations of a veteran, surviving spouse, or surviving child, including the net worth of any dependent for whom the veteran or surviving spouse is receiving increased pension under the new program, but excluding from the net worth of any child amounts reasonably set aside for educational and other vocational goals, with pension payments to be denied or discontinued if the net worth is such that some portion thereof could reasonably be expected to be used for the support of the veteran, surviving spouse, or surviving child.

Fifth, require the VA to increase pension rates under the new program annually by the same percentage and at the same time as social security cost-of-living increases.

Sixth, require the VA to redetermine the amount of pension to which a person is entitled at the same time that social security benefit rates are increased in such a way that no person in the new pension program will suffer a reduction in pension attributable to a cost-of-living increase in social security benefits, or other Federal program which provides for automatic annual cost-of-living increases in accord with the social security automatic "indexed" increase.

Seventh, allow persons in the current pension program to remain under the terms and conditions of that program, or to elect to receive pension under the new program if they are eligible.

Eighth, allow persons in the "old law" pension program, or who receive pension based on service during the Spanish-American War or earlier periods of war, to continue in those programs or to elect to receive pension under the new program if they are eligible.

On January 30, 1978, the VA submitted to Congress the report mandated by section 404 of Public Law 94–432. Entitled "Analysis and Evaluation of the Non-Service-Connected Pension Program" (hereinafter referred to as the "VA Pension Report"), it consists of twelve chapters, numerous tables, and an appendix which provides a

wealth of data about the current pension program, including an analysis of inequities and anomalies in the program. In addition, the report recommends the development of a new non-service-connected pension program incorporating principles specified in the concluding chapter and outlined in the discussion of the VA's testimony on S. 2384, *infra*.

Hearing on S. 2384

On February 3, 1978, the Committee held a hearing on S. 2384. Testimony was received from Dorothy Starbuck, Chief Benefits Director of the VA, and other representatives of the VA, The American Legion, Veterans of Foreign Wars, Disabled American Veterans, AMVETS, Veterans of World War I, Paralyzed Veterans of America, and Military Widows.

VA position

The VA, although stating that the existing pension program is "an immense improvement over earlier programs", identified the following major deficiencies which it had previously described in its pension report:

> While need is one of the traditional and currently legal requirements for entitlement to pension, need is not met sufficiently for a significant number of pensioners.
>
> Also a spurious need is created by certain exclusions of money available to meet need, but which are not counted as income for pension purposes.
>
> A central defect of the current pension program is that it fails to provide adequate assistance to many pensioners.
>
> Another difficulty with the current program is the two variable system. It does not accurately relate pension benefits to pension need. The two variables are the annual income limitations, and a sliding scale of rates. Adjustment of the income limitation to correspond with the increase in cost of living, while beneficial to those in the higher income bracket, does little or nothing for those with minimal or no income, those who have the maximum need.
>
> One of the most unfortunate and abrasive aspects of the current program lies in the reduction of benefits at the end of the year in which an increase in income has occurred rather than a reduction simultaneous with increases in other income. While well intentioned, it is discriminatory in that it favors those receiving such increases by providing continued receipt of pension at the higher rate for the remaining months of the year. It is abrasive in that it effects a reduction long after the increase in other income has been experienced and after the recipients have become accustomed to a higher total income.
>
> Still another inconsistency and inequity results from the exclusion of all or part of income actually received from determinations of income for pension purposes. There are instances where veterans living with a spouse may receive pension even though the spouse is earning a very considerable salary, while another veteran whose spouse is retired and whose retirement is countable receives no pension.
>
> There is one other inequity of the present program, the unequal treatment as between a veteran and a surviving spouse.

On the one hand, a veteran must be totally and permanently disabled to be entitled to pension, and the additional amount for additional dependents is less, and limited, than with respect to a surviving spouse. On the other hand, the amount payable to a surviving spouse is less, and such survivor is not entitled to a housebound rate.

In addition, nonaged surviving spouses qualify for pension without having to meet the disability criteria.

The VA asserted that such "inconsistencies, inequities, and anomalies . . . cannot all be corrected within the framework of the law now constituted" and reiterated the principles which it had advanced for a new pension program in its report as follows:

The VA pension program should be a needs-based income maintenance program for the totally and permanently disabled and the aged.

The program should treat similarly circumstanced individuals similarly:

The same eligibility requirements should be applied to all applicants.

Equal benefits should be provided to those beneficiaries whose circumstances (income and assets) are the same.

The basic level of assistance provided should ensure a pensioner an income at the national standard of need. (VA Pension Report, pages 404–405 (Committee Print No. 13, January 30, 1978)).

Consistent with the foregoing principles, a new pension program should provide payment to a veteran pensioner for each child of the veteran at the rate that is paid to a surviving spouse with children. (*Id.* at 406.)

A new pension program should count all family income for pension purposes, including earned income, as long as the family unit is intact. Pension payments should increase/decrease dollar for dollar as family income [decreases/increases . . .] (*Id.* at 408.)

Consistent with announced principles, a new pension program should not contain the current 10 percent retirement income exclusion. (*Id.* at 411.)

Accordingly, a new pension program should continue to exclude from the countable income moneys received that act as offsets. (*Id.* at 413.)

. . . [A] new pension program should retain the income exclusion of payments from public or private relief or welfare organizations. (*Id.* at 414.)

When an individual has entitlement to more than one Veterans' Administration benefit, such individual should receive only one benefit having the right to elect to receive the greater benefit. (*Id.* at 415.)

The "grandfathering" of pensioners should be done to protect existing program rights and benefits. (*Id.* at 416.)

Consistent with the announced principles, a new pension program should provide for adjustments to benefit payments as changes in income occur. (*Id.* at 417.)

Benefits in a new pension program should be adjusted as changes occur in the cost of living with adjustments made concurrently with those in other major Federal programs. *Id.* at 419.

> A new pension program should provide for the payment of an additional aid and attendance allowance subject to the basic factors affecting pension payments. (*Id.* at 420.)

Although the VA emphasized that a comprehensive legislative approach is needed, it did not testify in favor of S. 2384 for two reasons: First, S. 2384 would continue the eligibility for pension benefits of nondisabled, nonelderly surviving spouses; and second, the VA opposes the bill's provision of a current-work income exclusion, asserting that it would add substantially to the cost of the measure and is discriminatory as to persons who for various reasons do not have such income.

With respect to the eligibility of nondisabled surviving spouses, the VA's position is that the eligibility requirements of disability or age applicable to veterans should also be applicable to surviving spouses. The VA supports equalized income standards for surviving spouses who are permanently and totally disabled or age 65 or over. The VA also testified that it opposes the current-work income exclusion in the bill because it discriminates, in effect, against those who for various reasons do not have income derived from current work, by permitting persons who do receive such income to have higher aggregate incomes (pension plus other income) than those who do not. The VA also asserted that the cost of the current-work income exclusion—estimated by the VA at $810.5 million over 5 years—does not benefit the most needy.

In the light of criticisms and suggestions made in testimony at the hearing and the recommendations of the VA (further amplified in followup discussions between Committee and VA staff), the Committee ordered the bill reported on March 23, 1978, with an amendment in the nature of a substitute and a title amendment. The objectives of the bill as reported (set forth in the SUMMARY OF S. 2384 AS REPORTED) are identical to those of the bill as introduced.

The bill as reported also provides for a new program of improved dependency and indemnity compensation benefits for the surviving parents of veterans who died as a result of their service-connected disabilities. In addition, it provides for a cost-of-living increase in the pension payable to certain institutionalized veterans. Finally, it names two VA hospitals located in Tampa, Florida and Bedford, Massachusetts.

Other Pension Proposals

In recent years, there has been much interest in two very costly types of legislation related to the pension program—"social security pass-through" legislation under which the amounts of any social security cost-of-living increases received by a pensioner would be disregarded in computing his or her pension entitlement, and World War I "service pension" legislation under which all World War I veterans and survivors would receive a non-need-based monthly payment.

A pass-through of social security cost-of-living increases is intended to solve the continuing problems experienced by many pensioners, who not only do not benefit from the cost-of-living rate increases in the pension program enacted by Congress, but who also suffer reductions in pension benefits directly attributable to social security cost-of-living increases. Such measures would not, however, address the basic problem inherent in the current program which causes reductions

in pension following a social security cost-of-living increase. Rather, such measures would create new inequities; and, within a few years, a class of pensioners would be created having actual income substantially above the national minimum standard of need. For example, on November 3, 1977, the Senate overwhelmingly adopted Amendment No. 1580 to H.R. 9346, the Social Security Amendments of 1977. This amendment, not agreed to in conference, would have directed the VA to exclude from the countable income of a pensioner any social security cost-of-living increase occurring after 1979. Since only persons who have social security income would benefit from this exclusion, and because of the value of the exclusion would be compounded each year, the effect of such a measure would have been to create several classes of pensioners whose aggregate incomes would differ sharply even though their needs were identical. Such an approach would strike at the heart of the pension program as a need-based income maintenance system, by using available resources to benefit those receiving social security income while those who are most in need would not benefit at all.

The first-year (fiscal year 1978) cost of S. 107, a pass-through measure retroactive to 1972, was estimated at $2.2 billion. A bill which would operate prospectively only, S. 1195, would have a first-year (fiscal year 1978) cost of $118.9 million, but its future costs would be almost as high as those for S. 107, which was estimated to cost $1.14 billion in 1982.

The effect of an unrestricted, non-need-based service pension for World War I veterans and survivors would be to distribute a large proportion of the limited dollars available for the pension program to those who are not in need. The estimated costs of a service pension—even if limited to World War I veterans and survivors—would increase budget allocations for pension benefits far beyond what is a reasonable or equitable level for this type of program, when all competing veterans' benefits programs are taken into account—especially those for service-connected veterans. For example, the VA estimated that one World War I service pension measure, if enacted, would add approximately $1.7 billion to the cost of the existing program in fiscal year 1979.

In view of the support evidenced for pass-through and service-pension legislation and the very large costs which they would generate if enacted, the Committee believes that the need is even greater to achieve a restructuring of the pension program that will provide substantial increases in benefits for those in greatest need and eliminate the other inequitable features of the current program which have created many of the quite understandable concerns underlying those approaches.

Long-Range Cost Estimate

The Committee has carefully followed the development by the Office of Management and Budget's Special Studies Division of a long-range computer model [1] simulating the anticipated characteristics

[1] A description of the long-range computer model is found in chapter IX of the VA pension report (that chapter is reproduced in its entirety in Appendix B of this report).

of the pension population over the next 25 years. At the Committee's request, this model was used to prepare comparisons between the expected total costs of the current program at 5-year intervals between 1980 and 2000 and the expected total costs of S. 2384 over the same period.

The following table, based on one prepared by OMB using its own economic assumptions, estimates the total costs in current dollars of the years indicated. "Current dollars of the years indicated" are calculated to reflect the estimated increase in the Consumer Price Index which is assumed to continue throughout the period 1980–2000.

TABLE 3.—OMB ESTIMATES OF TOTAL COSTS IN CURRENT DOLLARS OF THE YEARS INDICATED

[In millions]

	1980	1985	1990	1995	2000
Current program (maximum)[1]	$3,112	$4,248	$5,517	$7,432	$9,709
Current program (intermediate)[2]	2,971	3,691	4,395	5,492	5,678
S. 2384	3,213	3,780	4,479	5,731	7,525

[1] This estimate assumes that the current program would be adjusted in the future so that all pension payments would be increased in accordance with the rise in the Consumer Price Index.

[2] This estimate assumes that the current congressional practice of adjusting the maximum benefit and the annual income limitations to accord with the rise in the CPI would continue, without changing the formula used to calculate actual benefit payments.

It should be noted that OMB's estimate of "total costs" do not include the cost of the pension program for surviving children because there are insufficient data upon which to estimate these costs. However, it is reasonable to assume that the costs shown for "current program" would be many hundreds of millions higher if surviving children were included, but the costs shown for S. 2384 would be only slightly increased. Thus, the net cost of S. 2384 would be significantly lower than shown.

The OMB estimate also does not compare the long-range costs of S. 2384 with the costs of a pass-through or service-pension measure added to the costs of the current program if not restructured. The long-range costs of such legislation would, of course, be far higher even than those shown for "current program (maximum)".

An examination of this table indicates that the difference between the expected long-range maximum total costs of the current program and S. 2384 would be sizable. The two sets of figures shown for "current program" are very different. The "maximum" costs assume that the present pension program would continue more or less in its present form except that all the benefit amounts payable under that program would be "indexed"—increased annually in accordance with the CPI—instead of continuing the current practice of increasing only the maximum benefits payable and the annual income limitations, and providing "adjustments" for the intermediate rates through the application of the formula.

The table indicates that by 1985 the enactment of S. 2384 would result in cost savings of $468 million over the cost of the current program if indexed and that these savings would continue to rise thereafter—to about $1.7 billion by 1995.

Discussion of S. 2384

Improved Pension Benefit Rates Set Above National Minimum Standard of Need

As the foregoing discussion clearly illustrates, this Nation has always acknowledged the special obligation it owes to those veterans who served our country during wartime. A pension program to assist those veterans and their survivors when they are in need is one of the ways our Nation has traditionally discharged this obligation. In the Committee's view, an effective pension program should provide assurance that no veteran who served on active duty in wartime who is unable to support himself or herself by reason of permanent and total nonservice-connected disability or age will be relegated to poverty levels of subsistence or to welfare programs to meet basic subsistence needs. To achieve that goal, the Committee concluded that pension rates should be determined by reference to a national minimum standard of need so that beneficiaries will have sufficient assured income to permit them to live in dignity.

In this connection, the Committee has reviewed Federal programs in which standards of need have been suggested or established for basic subsistence. Thus, the Committee notes that the Administration has proposed $2,500 and $3,750 as the maximum Federal benefit levels for aged, blind, and disabled individuals and couples under the Program for Better Jobs and Income (PBJI), the title of the Administration's proposed welfare-reform program currently under consideration in Congress. However, because the financing of that program is designed to encourage States to supplement the Federal payments and the veterans' pension program is not predicated upon State supplementation, the PBJI benefit levels do not provide an appropriate guide for pension benefits.

The Committee also took cognizance of the level of support furnished under the Supplemental Security Income (SSI) program which assists the needy aged, blind, and disabled. The maximum Federal rates payable under SSI, effective July 1978, are $2,272.80 for a single individual and $3,409.20 for a couple.

Another official benchmark is the Bureau of the Census poverty threshold data based on family size, sex of household head, and farm-nonfarm residence. This information is published annually, and the figures most recently published are for 1976. In 1976, the income threshold for poverty level for a single individual without dependents individual was $2,877 and the figure for a couple was $3,688. (U.S. Bureau of the Census, Current Population Reports, Series P–60, No. 107, "Money Income and Poverty Status of Families and Persons in the United States: 1976" (Advance Report) U.S. Government Printing Office, Washington, D.C. 1977). The poverty thresholds provide a means by which the number of families living in poverty can be estimated. They are annually updated to reflect increases in the Consumer Price Index.

However, as a guide to determining the basic maximum annual pension rates ("income standards")—those applicable to a veteran who has no dependent family members and a veteran with one depend-

ent family member—the Committee has adopted the poverty level guidelines published annually (in April) by the Department of Labor in the form of levels of income related to family size. These levels of income are used to establish basic eligibility for certain programs for economically disadvantaged persons, such as employment and training under the Comprehensive Employment and Training Act (CETA). The figures released in April 1978, for use during the following 12 months are shown by the following table (which also shows those published in April 1977, for purposes of comparison):

Family size	April 1978						April 1977, Continental United States	
	Continental United States		Hawaii		Alaska			
	Nonfarm	Farm	Nonfarm	Farm	Nonfarm	Farm	Nonfarm	Farm
1	$3,140	$2,690	$3,620	$3,130	$3,940	$3,380	$2,970	$2,550
2	4,160	3,550	4,790	4,110	5,210	4,450	3,930	3,360
3	5,180	4,410	5,960	5,090	6,480	5,520	4,890	4,170
4	6,200	5,270	7,130	6,070	7,750	6,590	5,850	4,980
5	7,220	6,130	8,300	7,050	9,020	7,660	6,810	5,790
6	8,240	6,990	9,470	8,030	10,290	8,730	7,770	6,600

Source: U.S. Department of Labor.

As the table shows, the continental United States nonfarm level for an individual living alone is $3,140 and for a family of two, $4,160.

Those guidelines are based on the basic definition of poverty underlying the census data and are similarly adjusted annually by the increase in the Consumer Price Index. Prepared by and transmitted to the Department of Labor by the Department of Commerce, they are designed to guide Federal agencies in determining eligibility for particular programs and thus provide an appropriate measure of determining whether a person is economically disadvantaged.

Present poverty thresholds emanate from definitions developed by the Social Security Administration in 1964 and modified by the Federal Interagency Committee in 1969. The Social Security Administration utilized the cost of the "economy" food plan developed by the Department of Agriculture around 1964 as the starting point for determining the poverty threshold. Various food plans have been prepared by the Department of Agriculture for more than 40 years. The purpose of the food plans was to provide guides for estimating costs of needed food for families of varying sizes.

The next step in determining poverty levels was to translate food costs into total income requirements. Studies indicated that the proportion of income allocated to necessities and, in particular, food, is a viable indicator of economic well-being. The greater the proportion of total family income spent on food, the more likely the purchaser was financially hard pressed. As a result of an Agriculture Department evaluation of family food consumption and dietary adequacy in 1955, a relationship was established between the minimum cost of food and the total income (after taxes) needed by an individual, couple, or family. The 1955 evaluation revealed that the average food expenditure, using a Department of Agriculture "economy" food plan for poor families of two or more was approximately one-third of income after taxes.

From 1964 to 1969, the poverty threshold figures adopted in 1964 were adjusted to reflect the changes in the cost of food included within the economy food plan. In 1969, the Interagency Committee suggested that, inasmuch as the general increase in the cost of living was not adequately reflected in these figures, a better adjustment mechanism was required. Since that time, the Consumer Price Index (CPI) has been used to adjust the poverty threshold figures.

Poverty-level income is the maximum cash annual income a family of a given size can receive and still be considered economically disadvantaged. The amount of such income is used to determine whether or not a person or family unit is poor.

Use of such guidelines for each individual's particular situation enables the identification of those who must be regarded as economically disadvantaged or poor, that is, lacking sufficient income to meet basic needs and in need of assistance. To be adequate, the program of assistance should provide payments sufficient to assure that eligible beneficiaries' total incomes do not fall below the poverty level. To be fiscally responsible, the program should generally provide benefits only to those whose incomes fall below the guidelines, thus generally preventing the payment of benefits to persons whose incomes are sufficient to provide basic income maintenance. The Committee bill would provide such a program.

The goal of assuring each pensioner an income above the poverty level is a modest but, the Committee believes, an appropriately limited one in light of the nature of the pension program and the financial resources available for expenditure on all veterans' programs. In the Committee's view, the purpose of the pension program is to protect veterans and their survivors from poverty and insecurity and only those in need of such protection should be covered. Thus, the Committee does not believe that a pension payable by virtue of non-service-connected disability or death or attainment of the traditional retirement age of 65 should provide income maintenance at Federal expense far above the poverty line.

In arriving at this view of the pension program, the Committee has noted that legislative enactments—especially educational assistance under the GI Bill—during and since World War II, providing for veterans' benefits, have reflected the intention of Congress to place the wartime veteran in a position equal to the position he or she would have attained had it not been for the interruption of wartime service. Generally, veterans of given levels of education have attained higher levels of median income than have nonveterans with similar educational levels. The following tables show the relationship between educational level and median income for veterans and nonveterans in 1971 and 1975.

TABLE 4.—MEDIAN INCOME IN 1971, VETERANS AND NONVETERANS

Educational level	Median income in 1971	
	Veterans	Nonveterans
Less than high school	$5,920	$3,936
Some high school	8,080	6,331
High school graduate	9,160	7,557
Some college	10,060	5,334
College graduate	14,270	10,054

Source: VA Annual Report 1972, p. 3.

TABLE 5.—MEDIAN INCOME IN 1975, VETERANS AND NONVETERANS

Attained level of education	Median income in 1975	
	Veterans	Nonveterans
Less than high school	$6,650	$4,900
Some high school	9,860	6,960
High school graduate	12,000	9,110
Some college	13,180	7,330
College graduate	18,630	12,520

Source: VA Annual Report 1976, p. 4.

The median income of all veterans in calendar year 1975 was $11,990, as opposed to $7,800 for nonveterans.

Most veterans, having attained higher incomes during their working years than have nonveterans, can expect to receive higher incomes upon requirement as well. Through various retirement programs established in the last several decades, the amount of income earned by a person during his or her working years now generally bears some relationship to the income he or she will receive during retirement. Under the social security system, for example, the ratio of social security benefits to preretirement income—known as the "replacement rate"—enables a covered worker to determine with reasonable accuracy the amount of social security benefits he or she is likely to receive.

The following table shows the social security benefits which a retiree, a retiree's spouse, or survivor could expect to receive monthly in 1977 at differing levels of covered earnings (in this table, it is assumed that during the period of covered employment, the pre-1976 earnings for each category—"maximum", "average", and "low"—bore a relationship to 1976 earnings which also could be characterized as "maximum", "average", or "low"):

TABLE 6.—ILLUSTRATIVE SOCIAL SECURITY BENEFITS

Earnings category	Earnings in 1976	Monthly social security benefit payable	Replacement rate (percent)
Person retiring in January 1977 at age 65, primary benefit only:			
Maximum	$15,300	$412.70	32.4
Average	9,266	335.10	43.6
Low [1]	4,600	218.30	56.9
Spouse's benefit: (at age 65 or over):			
Maximum		206.40	[2] 48.6
Average		167.60	65.1
Low [1]		109.20	85.4
Person dying in January 1977 at age 35, family benefit for surviving spouse and 2 children:			
Maximum	15,300	865.40	67.2
Average	9,226	711.50	92.5
Low [1]	4,600	416.50	108.7
Person dying in January 1977 at age 46 or older, family benefit for surviving spouse and 2 children:			
Maximum	15,300	722.20	56.6
Average	9,266	618.60	80.1
Low [1]	4,600	328.90	85.8

[1] Assumed at $4,600 in 1976 and following the trend of the average wage in previous years.
[2] Total replacement rates for married retirees.

Source: Robert Myers, former Chief Actuary of the Social Security Administration.

Thus, veterans who will reach age 65 within the next decades can expect, on the average, to have higher retirement incomes than their nonveteran counterparts, and their higher median incomes will also result in higher survivors' benefits. The role of the veterans' and survivors' pension program with respect to aged wartime veterans is to provide financial assistance to those who, for various reasons, have been unable to attain the general level of financial security that most other veterans have been able to achieve.

New Income Standard Approach

In its pension report, the VA made the following recommendation:

> A new pension program should be developed.
>
> The VA pension program should be a needs-based income maintenance program for the totally and permanently disabled and the aged.
>
> The program should treat similarly circumstanced persons similarly.
>
> The same eligibility requirement should be applied to all applicants.
>
> Equal benefits should be provided to those beneficiaries whose circumstances (income and assets) are the same. (VA Pension Report, page 404 (Committee Print No. 13, January 30, 1978))

The Committee generally agrees with this recommendation.

In designing the new program, the Committee was guided by the previous reform measure, S. 2635, the proposed "Veterans and Survivors Pension Reform Act", passed by the Senate in 1975 but not acted on by the House. That bill attempted to meet the objectives of an equitable need-based pension program by establishing a "one-variable system".

The current pension program is a "two-variable" system with an annual income limitation and a sliding scale of rates. Under a one-variable system, basic levels of income support—"income standards"—are established by law, based on family size and other factors, and, in each case, the amount of pension payable is determined by subtracting the annual countable income available to the veteran or survivor from the applicable income standard.

The Committee bill adopts the one-variable approach with income standards established for different categories of beneficiaries. The amounts of the income standards for single veterans and those with a spouse or one dependent child are set at levels designed to guarantee that such pensioners will have income at or above the income standard applicable to their particular situations. In the case of larger families, the income standards are increased to provide income support for the additional family members. In addition, increases are also provided for veterans who are housebound and for those in need of regular aid and attendance.

Under the current pension program, a maximum monthly payment rate is set for veterans and surviving spouses who have little or no other income, and, for those who do have other income, that rate is reduced according to the applicable rate-decrement-income-limitation formula to determine the amount of pension payable, based on their annual

countable income, which may not exceed the applicable income limitations.

The maximum annual payment under the current pension program, as increased by the 6.5-percent increase enacted in Public Law 95–204, effective January 1, 1978, is $2,364 ($197 per month) for a veteran who has no dependents and no other income—$1,596 for a surviving spouse. A veteran with one dependent and no other income cannot receive more than $2,544 annually, with $60 added annually for each of up to two additional dependents. The latter amount—$5 per month for each of up to two additional dependents—is obviously inadequate. Thus, a veteran who has a spouse and does not have any other income receives a pension that is far below the national minimum standard of need, which was $4,160 for a two-person household in the most recent data published by the Department of Labor; and married veterans with more than 2 children do not receive increased payments for the additional children.

Existing law provides even less adequately for a surviving spouse. The surviving spouse without dependents who has no other income receives a maximum pension payment from the VA of $133 per month, or $1,596 per year—approximately two-thirds of the veteran's rate.

Thus, many disabled or elderly wartime veterans and the survivors of wartime veterans are forced to turn to income-assistance and in-kind programs such as Supplemental Security Income and food stamps merely to survive.

The benefits payable to pensioners who do have other income are determined by the rate-decrement-income-limitation formulas that are so complicated that literally only a very few people understand how they work. When Congress enacts a cost-of-living increase applicable to the current pension program, the complexities of these formulas are such that the actual percentage increase in the intermediate rates may be more or less than the percentage increase in the maximum rates and the annual income limitations. Moreover, use of this formula approach has meant that, especially in recent years, the aggregate incomes of pensioners who have social security income have not increased commensurately with increases in the Consumer Price Index, thus frustrating the apparent intent of the Congress in providing cost-of-living increases for them, especially in those situations in which the pensioner's total income is composed of VA pension plus social security, both of which Congress intends to be increased according to the rise in the Consumer Price Index. In fact, in many instances, the effect of a pension rate increase is merely to diminish the amount of reduction in pension benefits a veteran or surviving spouse was otherwise scheduled to receive.

On the other hand, features such as the exclusion from income of 10 percent of all retirement income, the exclusion of all of a veteran's spouse's *earned* income, and the minimum pension provision have tended, singly or in combination, to permit the payment of substantial amounts of pension dollars to persons whose nonpension income is well above the national minimum standard of need.

The one-variable income-standard approach adopted for the improved pension program in the Committee bill replaces this complicated and inequitable system with a simplified method of determining the amount of improved pension payable and ensures that no wartime veteran or surviving spouse who is permanently and totally disabled

from non-service-connected causes, or who is 65 or over, will be forced to live at poverty subsistence levels. The basic income standards—maximum rates—are set slightly above the poverty guidelines developed and published by the Department of Labor, and will assure that all eligible veterans and survivors receive a pension commensurate with their need. Under the income-standard approach, persons who have no other income would be entitled to receive the maximum amounts. For persons who do have other income, the improved pension income standard would be reduced dollar for dollar—except for certain exclusions—so that those persons would receive improved pension as a supplement to their other income. In this way, the aggregate income of a veteran who has no other income would generally be identical to that of a similarly-circumstanced veteran who does have some other income.

The income standard for a veteran or surviving spouse who has one dependent would be substantially increased in the Committee bill to be 1.32 times the basic standard for a veteran or surviving spouse with no dependents. That ratio, 1.32:1, is derived from the "poverty level guidelines" developed and published by the Department of Labor. This ratio in current pension law is 1.07:1 for veterans and 1.20:1 for surviving spouses. These ratios are far too low to account for the increased cost of supporting a two-person household.

Moreover, the income standard for each category would be increased by $660 for each additional dependent child. This amount is far more clearly related to the actual cost of supporting a dependent child than are the present levels.

Improved Pension Benefits for Veterans

In the Committee bill, as has been noted, the maximum rates of improved pension payable to veterans who are permanently and totally disabled from non-service-connected causes, or who are 65 or older, are substantially increased over the maximum rates authorized under the current program. Under the current program, the maximum monthly rate payable to a veteran who has no dependent family members and who is not in need of regular aid and attendance nor permanently housebound is $197 per month ($2,364 per year), if the veteran has countable income not exceeding $300 per year. Under the Committee bill, the maximum annual rate authorized for such veteran who has no other income is $3,240 ($270 per month), an amount which is based on the Department of Labor's April 1978, income level ($3,140) for a one-person household, adjusted by the estimated rise in the Consumer Price Index between April 1978, and October 1978, and slightly increased so as to be divisible by twelve.

The following table shows the maximum annual rates of improved pension proposed in the Committee bill for veterans:

TABLE 7.—*Improved pension rates for veterans*

Veterans	*Rates*
Veteran without dependent spouse or child	$3,240
Veteran with one dependent (spouse or child)	4,284
Veteran in need of regular aid and attendance without dependents	5,340
Veteran in need of regular aid and attendance with one dependent	6,384
Veteran permanently housebound without dependents	4,016
Veteran permanently housebound with one dependent	5,060
Two veterans married to one another	4,284
Increase for each additional dependent child	660

Under current law, the pension entitlement of a veteran whose annual countable income exceeds $300 but is less than the annual income limitation of $3,770, is determined by means of a rate-decrement formula based on increments of annual countable income, as follows:

If the annual countable income exceeds $300, the maximum monthly rate of $197 is reduced by $0.03 for each $1 of annual income which exceeds $300, but is not more than $500, $0.04 for each $1 of annual countable income which exceeds $500 but is not more than $700, $0.05 for each $1 of annual countable income which exceeds $700 but is not more than $900, $0.06 for each $1 of annual countable income which exceeds $900 but is not more than $1,100, $0.07 for each $1 of annual countable income which exceeds $1,100 but is not more than $1,700, and $0.08 for each $1 of annual countable income which exceeds $1,700 but is not more than $3,770. For example, a single veteran with annual countable income of $1,200 would receive a monthly pension of $156, determined as follows: $197 minus (.03×$200) minus (.04×$200) minus (.05×$200) minus (.06×$200) minus (.07×100) = $197 minus $41 = $156. In this case, the veteran's aggregate income—pensions plus countable income—would be $3,072, plus any income which is not "counted". The formula, designed to provide incrementally larger pension benefits to veterans with lower incomes, has that effect but also results in a system in which the aggregate incomes of veterans—pension plus other income—vary considerably. The following table shows the aggregate annual incomes of single veterans at varying levels of countable income:

TABLE 8.—SELECTED AGGREGATE INCOMES OF VETERANS UNDER THE CURRENT PENSION PROGRAM

Annual countable income	Annual pension	Aggregate annual income
$800	$2,136	$2,936
$1,300	1,764	3,064
$1,800	1,332	3,132
$2,300	852	3,152
$2,800	372	3,172
$3,200	60	3,260
$3,700	60	3,760
$3,770	60	3,830

It should be noted at this point that, under current law, only 90 percent of a veteran's retirement income is counted. Thus, if the "annual countable income" shown in the table above is retirement income, the actual aggregate income of the veteran is significantly higher than the "aggregate income" shown above.

Under the Committee bill, the annual income of any eligible veteran who has no dependent family members and whose annual countable income falls below the income standard of $3,240 would be entitled to improved pension benefits in the amount necessary to bring the veteran's aggregate countable income up to the income standard. The following table shows the aggregate incomes of single veterans under the new program at the same levels of countable income as were shown in the previous table:

TABLE 9.—SELECTED AGGREGATE INCOMES OF VETERANS UNDER THE IMPROVED PENSION PROGRAM

Annual countable income	Annual improved pension	Aggregate annual income
$800	$2,440	$3,240
$1,300	1,940	3,240
$1,800	1,440	3,240
$2,300	940	3,240
$2,800	440	3,240
$3,200	40	3,240
$3,700	0	3,700
$3,770	0	3,770

The annual rate of improved pension applicable to such a veteran would be reduced by the veteran's annual countable income, dollar for dollar in the case of nonemployment income (such as retirement benefits), but subject to the current-work income exclusion of $780, plus one-half the remainder, and other applicable exclusions, more fully discussed below.

The discussion above is equally applicable to the payment of pension under current law to a veteran who has one dependent family member. However, there are certain anomalies and inequities in the current program relating to married veterans and those who have children which the Committee bill also would address. It has been previously noted that a veteran who has more than three dependent family members cannot, under current law, receive any increase in pension benefits for such additional family members regardless of how little income the family has. This inexplicable inequity in an income-maintenance program is addressed by the Committee bill, which provides for substantially higher annual income standards applicable to such situations.

A second anomaly in the current program relates to the treatment of family income. Under the current program, the income of a veteran's spouse, with whom the veteran is living or to whose support the veteran is reasonably contributing, is considered as the income of the veteran to the extent such income is reasonably available to or for the veteran. The income of the veteran's dependent children is not considered, regardless of the amount, and the spouse's income is counted only to the extent that it exceeds the greater of (1) $1,2[illegible] or (2) all of the spouse's earned income. If the spouse's income is retirement income, only 90 percent of such income is countable.

It must be remembered in connection with provisions relating to married veterans that, in almost all cases, veterans who are pension beneficiaries are male. These provisions were incorporated into the pension program in order to allow married veterans and their spouses to benefit from the increased income support available to a household in which the spouse of a disabled or elderly person is employed or has a separate income. Because pension benefit rates at the time these exclusions were added were relatively low, and the average wages paid to women were also low, the aggregate household incomes of married veterans—pension plus the veteran's and spouse's other income—did not seem inequitable in view of the increased income necessary to support a two-person household. Since that time, women have

entered the work force in increasing numbers and median incomes of women have risen substantially. According to the VA Pension Report, the average family income of married veterans is far above that of those who have no dependent family members—attributable in most cases to the spouse's income. The fact that a veteran may receive need-based pension benefits exceeding $2,500 per year even though his or her spouse earns $10,000 a year or more does a great injustice to the principle that pension dollars should be distributed to those who are truly needy.

The Committee bill, however, is also based on the principle that a need-based income maintenance program must have a higher standard of need, as measured by income, for cases in which the beneficiary is legally responsible for his or her spouse's support and the family's dependent children. Consequently, in the Committee bill, the income standard applicable to a veteran with one dependent family member (who may be either a spouse or a child) has been increased to be 1.32 times the basic income standard applicable to a veteran who has no dependent family members. The ratio in current law is 1.08:1—so that the veteran who has a dependent spouse and less than $560 in annual countable income receives $15 per month for the support of his or her dependent spouse. The ratio adopted in the Committee bill was derived from the ratio between the income levels of a one-person household and a two-person household in the poverty level guidelines previously discussed. As in the case of the income standard applicable to a veteran who has no dependent family members, the income standard applicable to a veteran who has one dependent family member was increased to account for the estimated rise in the Consumer Price Index between April 1978, and October 1978, and then slightly increased so as to be divisible by 12. Consequently, an eligible veteran with a dependent spouse will be assured of improved pension benefits to bring his or her annual aggregate income up to the income standard of $4,284.

The income standard would also be increased by $660 for each dependent child supported by the veteran, without any limitation on the number, thus addressing one of the harshest inequities in the current program.

The Committee bill also recognizes, as a second important principle applicable to a need-based income maintenance program, that, in the case of benefits payable to a household consisting of more than one person, all the income of the family members on whose behalf the primary beneficiary—in this case, the veteran—is to receive benefits should be generally considered, to the extent it is reasonably available to the primary beneficiary. Thus, the Committee bill requires generally that the income of the veteran, the veteran's spouse, and the veteran's dependent children, if any, be considered in determining the veteran's entitlement, if the veteran is to receive increased improved pension for such persons. A special exclusion is provided, however, for the income from the current work of any child, as will be more fully discussed below. In addition, the special current-work income exclusion of $780 plus one-half of the remainder would be applicable to the earnings from current work of the veteran, the veteran's spouse, and any child's earnings exceeding the amount provided for in the exclusion applicable to children's earnings. These exclusions—exceptions to the need basis

of the new program—derive from the Committee's strongly-held view that sound public policy requires that work disincentives be eliminated from the program. However, the *non*employment income of all such persons—the veteran and the veteran's spouse and children—would reduce the annual rate of improved pension dollar for dollar, in order to give appropriate recognition to the principle that a need-based income maintenance program must take into account all income available to meet need and to prevent pension benefits from being paid to non-needy persons.

Improved Pension Benefits for Veterans Who Are in Need of Regular Aid and Attendance

The Committee bill provides for higher improved pension rates—with the amount of the increase in the rate based on the present "aid and attendance" allowance—for veterans in need of regular aid and attendance in response to the very clear and pressing needs of those severely disabled veterans for funds to defray the costs of such care.

Section 502(b) of title 38, United States Code, sets out the basic eligibility requirement for aid and attendance benefits, as follows:

> For the purposes of this chapter [chapter 15], a person shall be considered to be in need of regular aid and attendance if such person is (1) a patient in a nursing home or (2) helpless or blind, or so nearly helpless or blind as to need or require regular aid and attendance of another person.

By regulation (38 C.F.R. secs. 3.351(c) and 3.352) the VA has established criteria to implement this provision as follows:

> § 3.351(c) *Aid and attendance; criteria.* The veteran, spouse, widow, widower, or parent will be considered in need of regular aid and attendance if he or she:
>
> (1) Is blind or so nearly blind as to have corrected visual acuity of 5/200 or less, both eyes, or concentric contraction of the visual field to 5° or less; or
>
> (2) Is a patient in a nursing home on account of mental or physical incapacity; or
>
> (3) Establishes a factual need for aid and attendance under the criteria set forth in § 3.352(a) . . .
>
> * * * * * * *
>
> **§ 3.352. Determination of permanent need for regular aid and attendance and "permanently bedridden".**
>
> (a) *Basic criteria.* The following will be accorded consideration in determining the need for regular aid and attendance (§ 3.351(c)(3)): inability of claimant to dress or undress himself (herself), or to keep himself (herself) ordinarily clean and presentable; frequent need of adjustment of any special prosthetic or orthopedic appliances which by reason of the particular disability cannot be done without aid (this will not include the adjustment of appliances which normal persons would be unable to adjust without aid, such as supports, belts, lacing at the back, etc.); inability of claimant to feed himself (herself) through loss of coordination of upper extremities or through extreme weakness; inability to attend to the wants of nature; or incapacity,

physical or mental, which requires care or assistance on a regular basis to protect the claimant from hazards or dangers incident to his or her daily environment. "Bedridden" will be a proper basis for the determination. For the purpose of this paragraph "bedridden" will be that condition which, through its essential character, actually requires that the claimant remain in bed. The fact that claimant has voluntarily taken to bed or that a physician has prescribed rest in bed for the greater or lesser part of the day to promote convalescence or cure will not suffice. It is not required that all of the disabling conditions enumerated in this paragraph be found to exist before a favorable rating may be made. The particular personal functions which the veteran is unable to perform should be considered in connection with his or her condition as a whole. It is only necessary that the evidence establish that the veteran is so helpless as to need regular aid and attendance, not that there be a constant need. Determinations that the veteran is so helpless, as to be in need of regular aid and attendance will not be based solely upon an opinion that the claimant's condition is such as would require him or her to be in bed. They must be based on the actual requirement of personal assistance from others.

(b) *Attendance by relative.* The performance of the necessary aid or attendance service by a relative of the beneficiary or other member of his or her household will not prevent the granting of the additional allowance.

Under current law, veterans of World War I and later periods of war who are in need of regular aid and attendance receive $165 per month for this purpose in addition to their pension benefit payment. For example, a single veteran who has little or no other income and is thus entitled to the maximum pension rate of $197 per month would receive a total of $362 per month. A single veteran whose annual countable income is less than $3,770 but more than $3,200 and who is thus entitled to the minimum pension rate of $5 per month would receive a total of $170 per month. In the first case, the veteran would have annual income (pension only) of $4,344; in the second case, the veteran would have annual income (pension plus other income) of approximately $5,240 (assuming annual countable income of $3,200). If the veteran's nonpension income were retirement income (only 90 percent of which is counted), such as social security benefits, the actual aggregate income would be approximately $5,592.

A veteran whose annual countable income exceeds the annual income limitation by not more than $500 remains entitled to the aid and attendance allowance, reduced by 16.6 percent for each $100, or portion thereof, by which the veteran's annual income exceeds the annual income limitation. Before this provision was enacted, a veteran receiving the aid and attendance allowance who was terminated from the pension program by reason of a small amount of income above the applicable income limitation lost the entire aid-and-attendance allowance, so that aggregate income would suffer a sharp decline.

Under the Committee bill, the annual income standard applicable to veterans is increased by $2,100, when the veteran is in need of regular aid and attendance. Thus, in the case of a veteran who has no dependent family members, the annual income standard would be $5,340;

in the case of a veteran who has one dependent family member the annual income standard would be $6,384, increased by $660 for each additional dependent child. The annual rate would generally be reduced dollar for dollar by other income available to the veteran. However, the current-work income exclusion applicable to the incomes of veterans in need of regular aid and attendance (and their spouses' and children's incomes) would be increased to $1,560 plus one-half of the remainder, permitting these veterans to remain eligible for improved pension at higher levels of aggregate family income.

The substantially higher benefit levels and the higher current-work income exclusion would provide greater income security to these very seriously disabled veterans to help defray the added costs for the personal care they need. Such costs are typically in the form of direct expenditures for a paid attendant or the indirect cost of employment foregone by a family member who provides the necessary assistance.

The higher current-work income exclusion, further discussed below, reflects the Committee's view that the new program should be structured so that it does not operate as a work disincentive. Those veterans who have serious and permanent catastrophic disabilities, such as blindness or paraplegia, for which aid and attendance is required, will also benefit from other exclusions provided for in the Committee bill, such as certain unreimbursed medical expenses, unusual transportation expenses incurred in traveling back and forth to work, and educational expenses.

Improved Pension Benefits for Veterans Who are Permanently Housebound

The Committee bill also provides for increased improved pension rates—with the amount of the increase in the rate based on the present "housebound" allowance—for those veterans who are not so disabled as to require regular aid and attendance but who are either substantially confined to the immediate premises of their homes (or the ward and clinical areas of a health-care facility if they are institutionalized) or who have additional disabilities independently ratable at 60 percent or more. Under current law, an allowance of $61 per month ($732 per year)—approximately 40 percent of the aid and attendance allowance—is payable to a veteran who is so disabled; this sum is added to the basic pension payment. A veteran eligible for this "add-on" benefit who receives a small increase in nonpension income such that his or her income exceeds the income limitation, loses eligibility for the "housebound" allowance, so that his or her income declines sharply. For example, a housebound veteran without dependent family members who has nonpension income of $3,760 receives $60 per year in pension benefits and a housebound allowance of $732, totaling $4,552 in aggregate income. If the veteran's nonpension income increased by only $25 per year, pension eligibility would be terminated, resulting in a decline in aggregate income of $767 ($4,552 minus $3,785).

Under the Committee bill, the basic annual improved pension rates for these veterans would be increased by $776—to $4,016 in the case of a veteran who has no dependent family members and to $5,060 in the case of a veteran with one dependent family member, with $660 to be

added for each additional dependent child. In each case, the rate payable would be reduced by the amount of the veteran's countable annual income and the income of dependent family members which is reasonably available to the veteran. These provisions assure an income standard well above the poverty line for these seriously disabled veterans, and also assure that, in cases in which an increase in outside income results in a termination of improved pension benefits, the veteran does not suffer a sharp decline in aggregate income.

Special Add-On in Improved Pension Benefits for Veterans of World War I

The Committee bill provides for a 25-percent increase in improved pension benefits payable to a veteran of a period of war if veterans of that period of war were not entitled to home loan guaranty benefits under chapter 37 of title 38 or educational assistance benefits under chapter 34 of such title, or under prior corresponding provisions of law. The extra payment will be proportionately larger to those with little income other than improved pension and will not be subject to reduction by other income. All veterans who would be entitled to the 25-percent add-on are veterans of World War I or earlier periods of war, such as the Mexican border period, because these GI Bill educational and loan guaranty benefits, which were first adopted during World War II, were never extended to veterans of earlier wars.

Under current law, a 25-percent add-on in benefit rates is applicable to the pension payable to any veteran reaching the age of 78. Although this add-on was not intended to benefit World War I veterans exclusively, it was clearly recognized at the time of its adoption in the 94th Congress (Public Law 94–432) that almost all veterans who would be entitled to receive it at that time were veterans of World War I.

The Committee, in considering the design of the improved pension program, rejected the concept of an add-on related to age because there is no data to support the notion that persons 78 years of age and over who are not so disabled as to be housebound or in need of regular aid and attendance have a greater need for income support than persons 75, 70, or any other age less than age 78.

The 25-percent add-on in the Committee bill does not find its justification in the assertion that persons of a particular age require more income support. Nor does it reflect the view that service during any particular war period should be regarded as more or less meritorious than service during any other war period. Rather, the add-on responds to the legitimate claims of World War I veterans, who were never made eligible for the readjustment benefits generally available to veterans of later periods of war. To the extent that the lack of readjustment benefits for World War I veterans prevented some veterans of that war from attaining sufficient income security in their old age to prevent their having to turn to the income assistance provided by the pension program, this special benefit helps to make up for that lack of earlier assistance.

Special Situations Under the Improved Pension Program

The Committee bill provides for certain special situations under the improved pension program.

Veterans married to veterans, where both are eligible for improved pension

In the case of two veterans who are married to one another, each of whom is independently eligible for improved pension on the basis of his or her own service and disability, the bill provides for the payment of improved pension at the annual rate of $4,284. This is identical to the rate provided for a veteran with one dependent family member. If either veteran is in need of regular aid and attendance, the annual rate would be $6,384; if both are in such need, the annual rate would be $8,484. If either veteran is permanently housebound, the annual rate would be $5,060; if both are permanently housebound, the annual rate would be $5,836. If one veteran is in need of regular aid and attendance and the other is permanently housebound, the annual rate would be $7,160. In all cases, the annual rate would be increased by $660 for each dependent child to whose support either or both veterans reasonably contribute and reduced by the veterans' annual income and the income of any dependent children for whom the veterans are receiving increased improved pension. Annual income determinations, income exclusions, net worth determinations, and annual reporting requirements would be identical to those required of other participants in the improved pension program.

These provisions recognize that in such a situation—which may occur in the future with some frequency in view of the fact that increasing numbers of women have served during recent periods of war—each veteran is a "primary beneficiary", and with respect to the very severe disabilities to which the higher "aid and attendance" or "permanently housebound" income standards respond, no distinction should be drawn between the veterans. These provisions also limit basic pension rates to those generally applicable to a veteran with one or more family members in order to keep the assistance provided in line with the basic concept of need. There is no comparable provision in existing law, and VA officials are unaware of any such cases having arisen.

Veterans eligible for service-connected disability compensation

In the situation in which a veteran is entitled to compensation for a service-connected disability and is also eligible for improved pension, the VA would be required to determine which benefit is greater and to pay only the greater benefit. This approach is the same as under current law. Also consistent with current law, a rating for a service-connected disability could be combined with a rating for a non-service-connected disability in determining whether the veteran is permanently and totally disabled for pension eligibility purposes.

Veterans eligible on the basis of their own and another's service

In the event that a veteran is entitled to improved pension on the basis of his or her own period of service and is also entitled on the basis of another person's period of service—for example, in the case of a veteran who is the surviving spouse of a deceased veteran—the VA would determine which benefit was greater and pay only the greater benefit. Under current law, there is no prohibition against duplicate benefits in such cases.

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Improved Pension Benefits for Surviving Spouses

The provisions in the Committee bill relating to surviving spouses are substantially different from those in the current pension program. Under current law, the surviving spouses of veterans of World War I and later periods of war generally receive pension benefits, including aid and attendance allowances, at two-thirds of the rate applicable to veterans. However, there are no eligibility requirements of disability or age applicable to surviving spouses; and surviving spouses are not eligible for housebound allowances. If the surviving spouse has a dependent child, and no other income, the maximum monthly rate is increased by $26 to $159 ($1,908 per year)—again, two-thirds of the maximum payable to a veteran with one dependent. For each additional child, however, the surviving spouse may receive $26 per month ($312 per year) with no limitation—anomalously, as compared to the situation when the veteran was living—on the number for whom such additional allowances may be paid.

The pension payable to surviving spouses who have other income is determined by means of a complex formula similar to that applicable to veterans, with a minimum pension of $5 payable to those whose annual countable incomes would yield no pension under the formula but do not exceed the income limitations of $3,770, in the case of a surviving spouse without dependents, and $5,070 in the case of a surviving spouse with one or more dependent children. A surviving spouse who is so disabled as to require regular aid and attendance receives an additional $79 per month.

Although current law provides for determinations of the annual countable income and net worth of surviving spouses comparable to those required of veterans, it does not require that the income of dependent children for whom the surviving spouse receives increased pension be included with the surviving spouse's income in determining pension entitlement.

Certain basic requirements applicable to surviving spouses under current law are retained intact in the improved pension program, such as the eligibility requirements relating to marriage. Generally, a surviving spouse is eligible if the marriage occurred before certain specified dates (which differ for each war period), the marriage lasted for 1 year or more, or a child was born of or before the marriage.

With respect to nondisabled, nonelderly surviving spouses without small children, the Committee bill provides for improved pension benefits at two-thirds of the rates applicable to veterans.

However, if the surviving spouse is permanently and totally disabled—using the same standard of disability that applies to a veteran—or is 65 or over, the annual income standard would be the same as that for a veteran, $3,240, and $4,284 if such a surviving spouse has one dependent child. In all cases, the annual income standard applicable to a surviving spouse who has more than one dependent child would be increased by $660 for each such child, the same increase for children as is applicable to veterans. In addition, the benefit rates for *all* surviving spouses in need of regular aid and attendance are equalized, as are the special exclusions from income applicable to veterans in need of aid and attendance. And if the surviving spouse has a child aged 6 or under, or a dependent helpless child of any age who became

helpless before reaching the age of 18, the applicable annual income standard is the same as that for a veteran with one dependent, $4,284.

In all such cases, the surviving spouse may receive increased improved pension benefits for a child of the veteran in the surviving spouse's custody (or in the case of a dependent helpless child, one whom the surviving spouse supports) even though she (or he) is not the natural parent of the child.

The annual income standards for surviving spouses in various categories are thus as follows:

TABLE 10.—*Improved pension rates for surviving spouses*

	Rates
Surviving spouse age 65 or over or permanently and totally disabled without dependent child	$3,240
Surviving spouse age 65 or over or permanently and totally disabled with one dependent child	4,284
Surviving spouse with one dependent child age 6 or under or helpless	4,284
Surviving spouse permanently and totally disabled in need of regular aid and attendance without dependent child	5,340
Surviving spouse permanently and totally disabled in need of regular aid and attendance with one dependent child	6,384
Other surviving spouse without dependent child	2,172
Other surviving spouse with one dependent child	2,868
Increase for each additional dependent child	680

As in the case of a veteran, the annual improved pension rate would be reduced dollar for dollar by annual income, with such income subject to the same exclusions as are applicable to veterans, including the current-work income exclusions.

By equalizing benefit rates for surviving spouses who are permanently and totally disabled or who are aged 65 or over, the Committee bill addresses a principal inequity of the current pension program; and by allowing a surviving spouse who has a helpless child, or a child aged 6 or under, to receive improved pension at the same rates applicable to a veteran, it recognizes the clear and urgent need of persons in those situations for income maintenance. It is consistent with the principles of a need-based system to treat similarly circumstanced persons similarly, as these provisions for equalizing benefit rates would do; and the Committee bill provides the needy elderly or disabled surviving spouse, whose ability to work is clearly impaired, with the assurance of a level of income sufficient to prevent the survivor from having to turn to social welfare programs merely to survive.

Improved Pension Benefits for Surviving Children

The Committee bill provides for improved pension benefits for the surviving children of wartime veterans. Although the basic requirements of eligibility would not be changed from those in existing law, the improved pension program for these children differs substantially in other ways.

Under current law, a surviving child is eligible for pension (as distinguished from an increase for the child's support in the pension paid to a surviving spouse receiving pension) only where there is no surviving spouse, the surviving spouse does not have custody of the child, or the surviving spouse is ineligible for pension by reason of income or remarriage. Generally, a child remains eligible until he or she marries, reaches the age of 18, or, in the case of a child attending a VA-approved

educational institution, until age 23. However, if the child becomes permanently incapable of self-support before reaching the age of 18, pension benefits may continue throughout the child's life.

If there is only one child, the pension benefit is $61 per month as long as the child's countable income (all earned income is excluded) does not exceed the annual income limitation of $3,080. If there is more than one child, the basic monthly rate is increased by $26 and the total amount is divided by the number of children with each child receiving an equal share. For example, if there are four children, each would receive $34.75 monthly. No other reduction in the amounts payable is made. The annual income of such a child is determined (after excluding all of the child's earned income) according to the rules generally applicable to determinations of annual income. A surviving child is not required to submit annual income reports to the VA, but pension benefits may be denied or discontinued if the child's net worth is excessive. No account is taken of the income or net worth of the person or persons with whom the child resides who are legally responsible for the child's support under State laws.

Although the VA does not gather data on the family situations of surviving children eligible for pension, it seems reasonable to assume that most such children reside with the surviving spouse who is ineligible for pension by reason of income or remarriage.

In the Pension Report, the VA made the following recommendation:

> A new pension program should count all family income for pension purposes, including earned income, as long as the family unit is intact. Pension payments should increase/decrease dollar for dollar as family income [decreases/increases] . . . . (page 408).

Although, as more fully discussed below, the Committee has not adopted the VA's recommendation on the treatment of earned income, it agrees with the VA that generally all income available to a veteran or survivor should be considered in determining eligibility for improved pension. Thus, the income of a veteran and the income of a veteran's dependent family members are considered together, and the same principle is applied to the income of a surviving spouse and the dependent children for whom the surviving spouse receives increased improved pension. This principle, in the view of the Committee, should also be applied to the income of the surviving child and the income of any person (or persons) with whom a child is residing who is (are) legally responsible for the child's support under the laws of the State where the child resides.

In accordance with these principles, the Committee bill provides for an annual rate of improved pension of $660, reduced by the child's countable income, in situations where the child is not residing with a person or persons legally responsible for the child's support. If, for example, both the veteran and the veteran's spouse are killed in an accident and the surviving children then live in a foster home, or in the home of a relative having no personal legal responsibility for support, each child would be eligible for improved pension at the annual rate of $660, reduced by each child's annual income. In all cases, the child's current-work income would be counted only to the extent that it exceeds the amount of income an unmarried person must have before being required to file a Federal income tax return (currently,

$2,950). In addition, a child pursuing a postsecondary course of education or vocational rehabilitation or training would be entitled to an exclusion from his or her current-work income amounts equal to amounts paid in the previous calendar year for educational expenses. The excess over those amounts would be subject to the current-work exclusion of $780, plus one-half of the remainder. Those provisions, applicable also to a dependent child's current-work income, are more fully described below. Net worth determinations and annual reporting requirements similar to those required to veterans and surviving spouses receiving approved pension would apply.

However, when the surviving child resides with the surviving spouse who then remarries, the income of the child, together with the income of the surviving spouse, would be counted in order to determine the child's eligibility for improved pension. The income of the surviving spouse's new spouse would be considered only if the new spouse assumes legal responsibility—generally through adoption—for the support of the veteran's child.

Under the Committee bill, the annual rate of improved pension for any one such child could not exceed the amount by which $660 exceeds the annual income of such child. The annual rate would be determined by subtracting from the applicable income standard the income of the child (subject to the current-work income exclusion) together with the income of the surviving spouse (and the income of the new spouse, if that person has assumed legal responsibility for the support of the child), determined in accordance with the general provisions of the Committee bill relating to income determinations. In all such cases, the applicable income standards would be determined under regulations to be prescribed by the Administrator and based on the provisions of the Committee bill applicable to surviving spouses. The following examples illustrate how these provisions would work.

Example 1

The surviving child lives with the veteran's widow who has remarried. The new husband has not adopted the surviving child or otherwise assumed legal responsibility for the surviving child. Two other children have been born to the married couple, and all three children are over age 6. The surviving child has income of $350 per year from a trust established by the veteran prior to his death. The child's mother is not disabled or elderly and has income from her own current work of $3,300 per year. (In this situation, the income of the new husband would not be considered because he has not assumed legal responsibility for the surviving child's support.) The appropriate income standard would be that applicable to a nondisabled surviving spouse with three dependent children—$4,188. The countable annual income of the surviving child and the child's mother would be determined as follows:

Current-work income of the child's mother	$3,300
Deduct	−780
Subtotal	2,520
Deduct one-half the remainder	−1,260
Countable income of the surviving spouse	1,260
Countable income of the surviving child	+350
Total countable income	1,610

Since the annual income standard of $4,188 exceeds the total countable income by more than $660, the surviving child would be eligible for annual improved pension benefits in the amount by which $660 exceeds the child's income—$310, or $25.83 per month.

If in the above example neither the child nor the child's mother had any countable income, improved pension benefits would be payable at the annual rate of $660, or $55 per month. However, if the child had no countable income and the countable income of their child's mother were $4,000, the annual rate would be the amount by which the appropriate income standard exceeds such countable income—$188, or $15.67 per month, reflecting the lesser need of the child for income support.

In situations where there is more than one surviving child, each child's improved pension eligibility would be determined separately. The following example illustrates how this would work.

Example 2

There are three surviving children living with the surviving spouse who has remarried and whose new spouse has adopted the children. The countable income of the parents is $4,500. Child *A* has countable income of $600 per year, child *B* has countable income of $1,400 per year, and child *C* has countable income of $150 per year. The applicable income standard is $4,848 (nondisabled surviving spouse plus four dependents). Neither child *A* nor child *B* would be eligible for improved pension, because, in the case of child *A*, the total countable income ($4,500 plus $600) exceeds the appropriate income standard; and for two reasons, in the case of child *B*: The total countable income ($4,500 plus $1,400) exceeds the appropriate income standard and child *B*'s own countable income exceeds $660. Child *C*, however, would be eligible for improved pension in the amount of $198 per year ($16.50 per month), the amount by which the appropriate income standard exceeds the total countable income.

In such cases, the child (or children) would be required to file annual income reports similar to those required of veterans or surviving spouses (subject to the same exemption, more fully discussed below), which include reports of the annual income of the person or persons with whom the child is residing who are legally responsible for the child's support. Similiarly, net worth determinations would be required of the child and such person or persons, with denial or discontinuance of improved pension benefits required if the net worth is such that some portion thereof could reasonably be used for the child's support. As in the case of dependent children under the Committee bill, amounts reasonably set aside for educational or other similarly worthwhile vocational purposes would be excluded from the net worth of any surviving child.

These provisions are designed to assure that improved pension benefits are paid only to persons in need of income support and that equitable rules are applied in each case to determine need. The Committee bill provides for the continued payment of benefits to surviving children in appropriate cases but would not permit such payments to surviving children who are not in need of such income assistance.

"Minimum" Improved Pension Benefits Payable Less Frequently Than Monthly

The Committee bill provides, that when the annual improved pension amount payable to any beneficiary is less than 4 percent of the

maximum annual rate payable to a veteran who has no dependent family members and no countable income, improved pension benefits may be paid less frequently than monthly. For the period between the effective date of the bill and the first annual automatic adjustment, which is expected to occur in June 1979 (for payments beginning July 1979), that amount would be any amount less than $129.60 per year (4 percent of $3,240). For example, if a single veteran's only income is social security benefits of $268 per month, based on this amount of income, he or she would be entitled to improved pension at an annual rate of $24. This rate, if payable monthly, would be $2. In order to reduce the administrative costs associated with the payment of such small amounts, the VA would be authorized to make such payments less frequently than monthly. In the Committee's view, a regularized method of payment in such cases should be adopted by the VA, for example, by making such payments on a quarterly or semiannually basis.

This provision differs substantially from existing law, which provides that in no case shall the pension payable to a veteran or surviving spouse whose countable income does not exceed the applicable income limitations be less than $5 per month. The "minimum pension" provision was added in an effort to address the anomaly created by the rate-decrement-income-limitation formula. Under the formula, a person whose countable income is within the applicable income limitation but above a certain amount would not be entitled to any pension were it not for the "minimum pension" provision. For example, under existing law, a single veteran with countable income of $3,600 per year—whose pension entitlement would otherwise be zero—receives $5 per month. The fact that the incomes of veterans and surviving spouses are generally rising means that each year more and more pensioners receive the minimum pension and that the administrative costs associated with the payment of these minimal benefits are also rising.

The method to be employed under the Committee bill is designed to assure not only that the administrative costs associated with the payment of small amounts of improved pension would be less but also that the amount that would trigger payment less frequently than monthly would rise annually, in accordance with the percentage increase in the applicable annual income standards. Thus, if that increase is 6 percent in each of the next 5 years, the amount which 4 percent of the income standard represents would rise also, as shown by the following income standard applicable to a veteran with no dependents represents would rise also, as shown by the following table:

TABLE 11.—EFFECT OF COST-OF-LIVING INCREASES ON "MINIMUM" IMPROVED PENSION BENEFITS

	Applicable standard[1]	4 percent of applicable standard
1978–79	$3,240.00	$129.60
1979–80	3,434.40	137.38
1980–81	3,640.46	145.62
1981–82	3,858.89	154.36
1982–83	4,090.42	163.62

[1] Veteran with no dependents.

In this way, the anomaly which the $5 monthly minimum pension benefit represents—of a fixed benefit losing its real value, over time,

at the same time that the costs of its administration are rising—would be eliminated in the new program.

Determinations of Annual Income

The Committee believes that the veterans' and survivors' non-service-connected disability and death pension program is intended to be, and should be, a need-based income-maintenance program. In such a need-based program, the question of how other income of the potential recipient is to be treated is extremely significant for the reason that most such recipients do have other income and the amount of such income indicates the extent of need. In all such cases, the Committee bill is premised on the theory that it is the aggregate income available to the household for its basic requirements which must be considered in order to make a fair and equitable determination of the need for income-maintenance benefits.

The social security program, through a succession of legislative enactments, now provides coverage to about 90 percent of the employed persons in our society. Almost all of those not covered by social security—such as civil service employees and teachers are enrolled in other income security retirement programs. The growth of private pension plans and individual retirement annuity plans (IRAs) has also increased substantially in recent years. Almost all elderly persons now receive income from social security, and the proportion of retirees who also have income from private retirement programs is steadily growing.

Also, because of the current extensive network of workers' compensation and social security benefits and civil service and other public and private retirement plans, very few adults who become totally and permanently disabled prior to reaching the traditional age of retirement do not receive some income from such programs. Similarly, social security coverage extends to the survivors of deceased wage earners, and today there are few surviving spouses and children who do not receive some income from such sources.

As previously explained, the Committee bill is designed to achieve several objectives. Among these is to provide a system based on the concept of the poverty line. The improved pension program guarantees that the aggregate income of any elderly or permanently and totally disabled wartime veteran or elderly or permanently and totally disabled surviving spouse of a wartime veteran will not fall below the poverty line. For most such veterans and survivors, the improved pension program will provide a supplement to other income in order to bring their aggregate incomes up to the appropriate income standards. For those persons who do not have any other income, the improved pension program will provide income-maintenance payments at the income standard. Generally, veterans and survivors whose incomes from other sources exceed the income standards will not be eligible for improved pension. This reflects the Committee's judgment that the purpose of the need-based pension program is to protect from poverty levels of subsistence those wartime veterans and their survivors who are unable to provide for themselves by reason of age or disability. Therefore, to the extent that such persons have income from other sources to provide for their basic needs, such income will gener-

ally be counted so as to reduce, dollar for dollar, entitlement to improved pension.

Exclusions From Countable Income

Although the income-standard approach of the Committee bill requires that all income from whatever source derived generally be considered in determining an individual's improved pension entitlement, the bill also provides for certain exclusions from countable income.

The current program provides for an extensive list of such exclusions. These may be classified as follows: First, the exclusion of certain income regularly received or a proportion thereof, such as the exclusion of all of a veteran's spouse's earned income and 10 percent of all retirement income; second, the exclusion of certain "one-time" receipts, such as fire insurance policy proceeds; and third, the exclusion of amounts equal to amounts paid out for certain expenses made necessary by events beyond the control of the pensioner, for example, unreimbursed burial or unusual medical expenses.

Certain exclusions permitted under current law are clearly equitable and warranted and are included under the improved pension program, either as they appear in current law or with modifications. Others do not comport with the essential principle that dollars available for ordinary living expenses should be counted in determining improved pension entitlement and are not continued under the new program. The bill also provides for certain exclusions which have no counterpart in the current program. Overall, the bill contains substantially fewer exclusions from income than current law.

With respect to income regularly received, the bill continues the exclusion, permitted under current law, of income received from public or private relief or welfare organizations. The amount of such income is generally predicated on a recipient's other income, such as VA pension. Under the Supplemental Security Income (SSI) program, for example, "income based on need" is counted so as to reduce SSI benefits dollar for dollar (42 U.S.C. 1382a(b)(2)(A)). To count income from such organizations for improved pension purposes would result in a series of back-and-forth adjustments in both pension and welfare payments. This exclusion eliminates such adjustment difficulties.

Regularly received nonemployment income, including retirement income, would be counted dollar for dollar under the Committee bill, because those dollars are available for maintenance. Thus, the current-law exclusion of 10 percent of all retirement income would not be included in the improved pension program.

The bill also does not include the present program's exclusion of all of a veteran's spouse's earned income or $1,200 of the spouse's total income, whichever is the greater. This exclusion, as has been noted, is an anomaly in a need-based income-maintenance program because it permits the payment of pension dollars to families without regard to their need.

Nevertheless, to count all income derived from current work would create another anomaly—that of a federally-sponsored need-based pro-

gram which discourages work. To some extent, the present program acts as a work disincentive with respect to its primary beneficiary—the veteran. Under current law, *none* of the earned income of a veteran is excluded. Thus, elderly veterans who must depend on the pension program for income support are heavily penalized if they engage in occasional or part-time work, and a catastrophically-disabled younger veteran who might seek to return to the workforce may be discouraged from doing so by the risk of losing the income security that pension provides.

Therefore, the bill provides for the partial exclusion, within certain limits, of income derived from the current work of the veteran and the veteran's spouse and children and the suviving spouse and surviving children. The provisions relating to the current-work income exclusions are more fully described below.

The bill incorporates the exclusions permitted under current law which recognize that certain moneys received by a pensioner are not available for living expenses. Thus, the bill provides for the exclusion of the entire proceeds of fire insurance policies and income realized from the disposition of real or personal property other than in the course of a business, because of moneys so received are generally needed and used to replace the property destroyed or sold. Where those amounts are sizable and are not used to replace the property, they would be considered in the net worth determinations required of all participants in the improved pension program.

In addition, the Committee bill provides for the exclusion, permitted under current law, of moneys received from a joint bank account by reason of the death of the other joint owner. This exclusion recognizes that the acquisition of exclusive control over a bank account, formerly held jointly, does not add to the amount of total income available for support.

As under current law, the Committee bill also provides for the exclusion of amounts equal to amounts paid out for certain expenses that are occasioned by events beyond the control of the pensioner and reduce the amount of income available for meeting ordinary living expenses. Thus, amounts equal to amounts paid by survivors for the just debts of a deceased veteran and amounts paid by veterans or survivors for the last illness and burial of a veteran or a veteran's spouse, or for unusual medical expenses, would be excludable.

Other exclusions under the Committee bill are for certain expenditures necessary for the veteran or surviving spouse to pursue a course of education or vocational rehabilitation or training or, in the case of a catastrophically-disabled veteran or surviving spouse who is employed or enrolled in a course of education or vocational rehabilitation or training, to enable that person to travel to and from his or her workplace, school, or training site.

The discussions which follow provide more detailed explanations of those exclusions in the Committee bill which either do not have any counterpart in the current program or would operate in a different fashion.

Unusual medical expenses

Unusual medical expenses would be deductible from the pensioner's annual income to the extent that such expenses annually are in excess

of $100 or 5 percent of annual income. Unusual medical expenses under current law are excludable from countable income, and by regulation (38 C.F.R. 3.262(l)), the Veterans' Administration has defined "unusual" to mean those expenses exceeding 5 percent of annual income paid for the pension beneficiary's health-care needs and those of certain close relatives. The VA permits a deduction of amounts paid for medical insurance premiums (including Medicare), physical examinations and diagnostic tests, dentures and eyeglasses, and home health services. The following table illustrates possible medical expenses:

TABLE 12.—*Listing of possible medical expenses*

Abdominal, arch or back supports
Ambulance hire
Artificial limbs
Braces, crutches or wheelchair
Convalescent or nursing home (for medical treatment only)
Dental services (e.g., cleaning, x-rays, filling teeth, oral surgery)
Dentures, eyeglasses, or hearing aid or batteries
Doctor's fees
Home health services
Hospital expenses
Insulin treatment
Nursing services (for medical care, including nurse's board)
Occupational, physical or speech therapist
Physical examinations and lab tests
Premiums for health, sickness or hospital insurance (including medical insurance under Medicare)
Prescription and drugs
Seeing-eye dog and maintenance
Transportation expenses for medical purposes (7 cents per mile plus parking and tolls; or actual fares for taxi, buses, etc.)
Whirlpool baths for medical purposes
X-rays or radium therapy

Source: Veterans' Administration.

The Committee believes that this list should be retained as illustrative of the types of medical expenses deductible, if not reimbursed, from annual income under the improved program.

By providing for a $100 deductible, the unreimbursed medical expenses exclusion generally makes the value of this exclusion equitable with respect to all pensioners under the improved pension program. For example, a person with $3,100 in nonpension income and $800 in unreimbursed medical expenses would be permitted to offset $700 against his nonpension income; under the current program, the offset would be limited to such expenses in excess of 5 percent of $3,100—$155—or $645, but a person with, for example, $1,200 in nonpension income and similar medical expenditures would be permitted to offset $740 (excess over 5 percent of $1,200—$60).

The exclusion of such amounts in excess of 5 percent of nonpension income, if that amount is less than $100, extends this very equitable exclusion to those persons whose annual nonpension income is less than $2,000, and for whom a "5-percent" deductible would prove more advantageous.

The unreimbursed medical expenses exclusion would apply to the expenses reasonably incurred for the health-care needs of the veteran, surviving spouse, and surviving child, as well as the family members for whom the veteran or surviving spouse receives increased improved pension. In the case of a surviving child who is not in the custody of persons legally responsible for the child's support, the exclusion would apply to the child's income. In the case of a child living with persons legally responsible for the child's support, the exclusion would apply to the income of the child considered together with the income of the responsible persons.

Such expenses would be disallowed if they are incurred after 30 days or more following notice to an improved pension beneficiary that health-care services of the same kind as those for which an exclusion had previously been granted were readily available at a VA facility if the VA further determines that VA health-care services continued to be available to the beneficiary. In almost all regions of the country, VA health care facilities are maintained for and available to meet the health needs of veterans receiving pension, and this provision would help to ensure that the VA facilities available to them are appropriately and economically utilized.

Current-work income exclusion

The Committee bill provides for an exclusion to benefit veterans or survivors who receive income from current work, defined as earned income within the meaning of sections 401(c)(2)(A) and 911(b) of the Internal Revenue Code of 1954 (26 U.S.C. 401(c)(2)(A) and 911(b)) which provide as follows:

§ 401(c). Definitions and rules relating to self-employed individuals ad owner-employees.

For purposes of this section—

* * * * * * *

(2) Earend income.

(A) In general.

The term "earned income" means the net earnings from self-employment (as defined in section 1402(a)), but such net earnings shall be determined—

(i) only with respect to a trade or business in which personal services of the taxpayer are a material income-producing factor,

(ii) without regard to paragraphs (4) and (5) of section 1402(c),

(iii) the case of any individual who is treated as an employee under section 3121(d)(3), (A), (C), or (D), without regard to paragraph (2) of section 1402(c), and

(iv) without regard to items which are not included in gross income for purposes of this chapter, and the deductions properly allocable to or chargeable against such items.

* * * * * * *

SEC. 911(b). DEFINITION OF EARNED INCOME.—For purposes of this section, the term "earned income" means wages, salaries, or professional fees, and other amounts received as compensation for personal services actually rendered, but does not include that part of the compensation derived by the taxpayer for personal services rendered by him to a corporation which represents a distribution of earnings or profits rather than a reasonable allowance as compensation for the personal services actually rendered. In the case of a taxpayer engaged in a trade or business in which both personal services and capital are material income-producing factors, under regulations prescribed by the Secretary, a reasonable allowance as compensation for the personal services rendered by the taxpayer, not in excess of 30 percent of his share of the net profits of such trade or business, shall be considered as earned income.

Thus, current-work income generally refers to the wages or salary derived from a person's current employment, including self-employment, as opposed to retirement benefits or other income based on past employment, such as social security benefits and civil service annuities, and income derived from nonemployment sources such as interest, dividends, and capital gains.

For veterans and survivors, generally, this exclusion provides that a recipient of improved pension who engages in current work will be entitled to exclude the first $780, plus one-half of the remainder of his or her current-work income, from annual countable income. If the veteran or surviving spouse is in need of regular aid and attendance, the current-work income exclusion would be the first $1,560, plus one-half of the remainder of annual current-work income. In the case of a veteran entitled to improved pension at an increased rate by reason of marriage or children, the exclusion will apply generally to all the current-work income of the veteran and the family members on whose behalf the veteran is receiving increased improved pension. Similarly, the exclusion will apply generally to all the current-work income of the surviving spouse and the children on whose behalf the surviving spouse is receiving increased improved pension. (The current-work income of any dependent or surviving child, however, would only be countable—and thus excludable—to the extent that it exceeds the amount of income which a child must have before being required to report such income for Federal income tax purposes; the amounts paid by the child for postsecondary educational or vocational rehabilitation and training expenses would also be excluded. This provision is more fully discussed below.) The following examples illustrate how this exclusion would apply and how much the aggregate income of the household would increase as a result of the exclusion.

Example 1

A married veteran age 67 whose wife has no income and who has no other dependents receives retirement benefits of $2,000 per year. The veteran is self-employed and derives net income from such self-employment of $3,400 per year. The appropriate annual income standard for the veteran (veteran with one dependent) is $4,284. The monthly amount of improved pension would be determined as follows:

Annual current-work income	$3,400
Deduct first $780 of such income	−780
Subtotal	2,620
Deduct one-half of the remainder	−1,310
Countable current-work income	1,310
Countable retirement income	+2,000
Total countable income	3,310
Applicable income standard	4,284
Less total countable income	3,310
Annual improved pension	974
Monthly improved pension	81.17

This elderly veteran would also, of course, be entitled to exclude annual unreimbursed medical expenses exceeding $100. Assuming that for this veteran those expenses were $400, the monthly amount of improved pension would be $114.50 computed as follows:

Countable income before exclusion of unreimbursed medical expenses	$3,310
Deduct amount equal to excludable medical expenses	−400
Total countable income	2,910
Applicable income standard	4,284
Less total countable income	−2,910
Annual improved pension	1,374
Monthly improved pension	114.50

The veteran's annual aggregate income would thus be $6,774 per year, derived as follows:

Retirement income	$2,000
Current-work income	3,400
Improved pension	1,374
Aggregate income	6,774

If in this situation the veteran's entire net income from self-employment were counted so as to reduce improved pension benefits dollar for dollar, the veteran would be ineligible for improved pension benefits and a disincentive to the veteran's effort to make a better life for himself and his wife would have been created.

In the absence of the current-work income exclusion, the veteran would decide whether or not to work in light of the following considerations. If he does not work, his aggregate income would be $4,684 ($2,000 retirement income plus $2,684 improved pension). If he puts forth the effort necessary to earn $3,400, his aggregate income would be $5,400 ($2,000 retirement income plus $3,400 current-work income). He would be only $716 better off than if he did not work, and he would lose the security which a regular monthly benefit provides. For every dollar he earned, he would have only 21 cents more income than he would have if he did not work. In such a case the veteran might decide that being able to receive so little more income (some of which would undoubtedly be consumed by work-related expenses such as commuting to the job and higher food costs (means at the work place)) would not be worth the effort required. If the veteran makes that decision—not to work—the cost to the Government in total annual pension payments would be $2,684 and the veteran's aggregate income would be only $4,684.

In this situation without the current-work income exclusion, the cost to the Government would be $1,310 higher; the veteran's aggregate income would be $2,090 lower; society would have lost the economic benefit of the veteran's productive work; and the veteran would have lost the very important psychological value of contributing to his own and his wife's support through work.

Example 2

A second example shows the value of the increased current-work income exclusion to a veteran or survivor who is in need of regular aid and attendance. For the purpose of this example, it may be assumed that the veteran has suffered a severe and permanent disability, such as blindness or paraplegia, but is not precluded by that disability from attempting gainful employment. If the veteran in this situation has no dependents and earns $4,200 per year, entitlement to improved pension benefits would be determined as follows:

Annual current-work income	$4,200
Deduct first $1,560 of such income	−1,560
Subtotal	2,640
Deduct one-half of the remainder	−1,320
Total countable income	1,320
Applicable income standard	5,340
Countable income	−1,320
Annual improved pension	4,020
Monthly income pension	335

The veteran's annual aggregate income would thus be $8,220, derived as follows:

Annual improved pension	$4,020
Annual current-work income	+4,200
Aggregate income	8,220

Thus, the increased current-work income exclusion would permit catastrophically disabled veterans or surviving spouses to remain eligible for improved pension, at the same time that they are returning to gainful employment. The exclusion is structured in such a way as to provide a gradual reduction in the amount of improved pension as current-work income rises, so that for each $2 of earnings above $1,560, the improved pension payment would decline by $1.

The following table shows the relationship between veterans and survivors who have family current-work income at approximately the minimum wage, and the way in which the current-work income exclusion would assist such persons. Column *A* shows the family's annual current-work income; Column *B* shows annual improved pension benefits; and Column *C* shows aggregate annual family income. Column *D* shows the current-work income cutoff point (or "breakeven point")—the point at which such persons would no longer be eligible for as much as $1 per year in improved pension benefits should current-work income rise to that level.

TABLE 13.—EFFECT OF CURRENT-WORK INCOME

	Family current-work income	Improved pension	Aggregate income	Cutoff point
	(A)	(B)	(C)	(D)
(a) Veteran without dependent	$5,512	$900	$6,412	$7,260
(b) Veteran with 1 dependent	5,512	1,918	7,743	9,348
(c) Veteran with 2 dependents	5,512	2,578	8,090	10,668
(d) Veteran with 3 dependents	5,512	3,338	8,750	11,988
(e) Veteran without dependents in need of regular aid and attendance	5,512	3,364	8,876	12,240
(f) Veteran with 1 dependent in need of regular aid and attendance	5,512	4,408	9,920	14,328
(g) Nondisabled surviving spouse without dependent	5,512	0	5,512	5,124
(h) Nondisabled surviving spouse with 1 dependent (over age 6)	5,512	502	6,014	6,516
(i) Disabled surviving spouse without dependent	5,512	900	6,412	7,260
(j) Disabled surviving spouse with 1 dependent	5,512	1,918	7,430	9,348
(k) Disabled surviving spouse without dependent and in need of regular aid and attendance	5,512	3,364	8,876	12,240
(l) Disabled surviving spouse in need of regular aid and attendance with 1 dependent	5,512	4,408	9,920	14,328

In connection with these provisions, it should be remembered that the veteran is eligible for smaller and smaller amounts of improved pension as current-work income nears the cutoff point. This ensures that improved pension would provide the greatest benefit to those most in need, while avoiding a work disincentive.

In this way the current-work income exclusion in the Committee bill differs substantially from the exclusion under current law of all of a veteran's spouse's earned income (or $1,200, whichever is the greater). The current-law exclusion has resulted in the anomaly of thousands of "needy" veterans receiving pension even though their household incomes are far above the poverty threshold.

Consistent with the Committee's view that the new program should not discourage work, the current-work income exclusion would also apply to the income of a veteran's spouse or dependents, which would be especially beneficial in situations where the nature of the veteran's disability precludes employment. The increased current-work income exclusion of $1,560, plus one-half of the remainder, in the situation where the veteran's disability is so severe that he or she is in need of regular aid and attendance recognizes the catastrophic effect which such a disability may have on the family and the increased income which may be required to provide for the family's basic needs.

In the Committee's view, it is extremely important to avoid discouruseful, remunerative employment on a part-time or occasional basis among those over 65 and to avoid provisions whose effect would be the discouragement of efforts to contribute to one's own support.

In the case of a veteran or surviving spouse who has become permanently and totally disabled before reaching the traditional age of retirement, these provisions ensure that such a person's efforts to become wholly or partially self-sustaining are not discouraged by a program which by its structure builds in a disincentive to such efforts. If improved pension benefits were reduced dollar for dollar by each dollar of current-work income, the risk to such a person of losing the income security provided by the improved pension program would greatly discourage a veteran from undergoing the strain, discomfort, and other tribulations which seriously disabled persons often encounter in attempting employment, for the financial incentive to earn these dollars would be eliminated.

In the Committee's view it is extremely important to avoid discouraging seriously disabled persons from attempting rehabilitation. The Committee bill is designed to further the strong, clear national policy—as reflected in the Rehabilitation Act of 1973—a policy of commitment to removing the barriers preventing seriously disabled persons from participating in the economy as wage earners.

The current-work income exclusion is derived from principles generally applicable to Federal income-maintenance programs designed to offset the risks of disability, old age, or the loss of the family breadwinner. Most of these programs—such as food stamps and SSI—are need-based, in the sense that the other income available to the recipient reduces entitlement; and the Committee bill exclusion itself—$780, plus one-half of the remainder—is patterned after the SSI earned-income disregard.

The largest of the programs, social security, although it responds to need, has never been regarded as need-based. In that program, as

amended by the Social Security Amendments of 1977 (Public Law 95–216), a person aged 65 to 72 who is retired under social security may earn from current work as much as $4,000 in a year before any deduction is made from his or her social security benefits. For earnings above $4,000, $1 is withheld for each $2 of earnings. A social security recipient age 72 or over, however, is not subject to any reduction. In 1977 these provisions were liberalized and extended so that in 1979, a social security retiree will be able to earn as much as $4,500 before any reduction is made; in 1980, $5,000; in 1981, $5,500; and in 1982, $6,000, with automatic adjustments in years after 1982. In 1982, the age at which such earnings would be exempt from any reduction will be lowered from 72 to 70. These provisions, which commanded widespread support in the Congress, respond to the changing trends in our society recognizing the social and economic importance of the work of persons who have passed the traditional retirement age of 65 but who continue to work. The elimination of laws requiring mandatory retirement at specific ages—as in Public Law 95–256, enacted on April 6, 1978—also illustrates this significant trend.

Current-work income exclusion for dependent and surviving children

Under the Committee bill, the current-work income of any dependent or surviving child would be excluded from countable income up to the amount of gross income ($2,950) an unmarried individual may have before being required to file a Federal income tax return under section 6012(a)(1)(A)(i) of the Internal Revenue Code of 1954 (26 U.S.C. 6012(a)(1)(A)(i)). The applicable part of that section is as follows:

§6012. Persons required to make returns of income.

(a) General Rule.

Returns with respect to income taxes under subtitle A shall be made by the following:

(1)(A) Every individual having for the taxable year a gross income of $750 or more, except that a return shall not be required of an individual (other than an individual described in section subparagraph (C))—

(i) who is not married (determined by applying section 143), is not a surviving spouse (as defined in section 2(a)), and for the taxable year has a gross income of less than $2,950.

* * * * * * *

Current-work income exceeding that amount (currently $2,950) would be subject to the general current-work income exclusion of $780, plus one-half of the remainder (or, in the case of a veteran or surviving spouse in need of regular aid and attendance, $1,560, plus one-half of the remainder). Thus, a dependent or surviving child might have as much as $3,730 ($2,950 plus $750) or more in annual current-work income before any reduction in improved pension benefits would occur. Any dependent or surviving child pursuing a post-secondary course of education or vocational rehabilitation or training would also be entitled to an exclusion from such child's current-work income of amounts paid by the child for educational or voca-

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tional rehabilitation or training expenses, such as tuition, fees, books, and materials. This exclusion would be cumulative with the $2,950 exclusion described above and is intended to ensure that no child is penalized for working to earn money needed for his or her schooling.

Because most children under the age of 18 do not have annual income from current work exceeding $2,950, the exclusion of this amount will prevent almost all dependent and surviving children under the age of 18 from having to account for their current-work income for improved pension purposes. Dependent and surviving children generally will have the security of knowing that they may retain all of their own earnings, and that their efforts to move toward self-sufficiency are not penalized.

However, in the event that such a child must file a Federal income tax return—and therefore must account for his or her earnings for tax purposes—the veteran, surviving spouse, or surviving child, as the case may be, would be required to report the child's annual current-work income to the extent that it exceeds $2,950.

Under existing law, the earned income of a surviving child is not counted in determining whether the child's income exceeds the income limitation, and no account is taken of children's earnings in determining the eligibility of a veteran or surviving spouse. Those provisions have assured that dependent and surviving children who enter the world of work are not penalized for their efforts. The provisions in the Committee bill applicable to such children's current-work income are also designed to prevent the improved pension program from discouraging the children's efforts to work and from having to keep records of their current-work income—except for the kind of records required for Federal income tax purposes—but the provision of a "cap" ensures that in the rare case in which a child under 18 has current-work income exceeding $2,950 annually, the general principles governing the treatment of income under the improved pension program are applied.

Surviving children remain eligible for pension up to the age of 23 as long as they are attending school, and the discussion above is equally applicable to the current-work income of children ages 18 to 23, except that, of course, it is much more likely that those young adults will have current-work income exceeding $2,950 annually.

Educational expenses

Another exclusion relates to the expenses incurred by a veteran or surviving spouse pursuing a program of education or vocational rehabilitation or training. These persons would be entitled to exclude from annual income amounts equal to amounts paid (including those paid from education, training, or rehabilitation allowances provided for under title 38) in the previous calendar year for the costs of such education or vocational rehabilitation or training, such as tuition, fees, books, and materials. In the case of veterans or surviving spouses in need of regular aid and attendance, unusual transportation expenses for traveling back and forth to the place of instruction or rehabilitation would also be deductible, to the extent that they exceed the reasonable expenses which would have been incurred by a nondisabled person using an appropriate means of transportation, including public transportation if available.

This exclusion reflects the Committee's view that the incursion of such expenses into a pension beneficiary's limited resources may be a

substantial deterrent to efforts to achieve a measure of independence through education or vocational rehabilitation or training. Particularly in the case of younger, catastrophically disabled veterans or surviving spouses—such as those who are blind or paraplegic—this provision furthers the Committee's intention that the improved pension program not operate as a disincentive to a disabled adult beneficiary's efforts to regain a measure of self-sufficiency.

Unusual transportation expenses incurred by catastrophically disabled veterans and surviving spouses

The same intent also underlies the exclusion from annual income of unusual transportation expenses, other than those that are reimbursed, incurred by a veteran or surviving spouse who is in need of regular aid and attendance in traveling back and forth to such person's place of employment. As previously noted, the disabilities which create the need for the additional income support provided by the "aid-and-attendance" income standard are severe, in many instances, catastrophic, and they are not easily overcome. In many instances, of course, a person so severely disabled as to require regular aid and attendance is terminally ill or so completely overwhelmed by the nature of his or her incapacitation that employment is not possible. In other cases, the presence of a severe and permanent disability is not an absolute barrier to employment; nor, in the Committee's view, should it be.

Severely disabled persons who attempt employment meet many obstacles, however, which require courage and motivation to overcome. Our society has become increasingly sensitive to the difficulties they encounter—such as in traveling back and forth to the place of employment and gaining physical access to the worksite—but some difficulties cannot be eradicated entirely. By providing for the exclusion of unusual transportation expenses incurred by such persons in traveling back and forth to work, the bill would help to eliminate one barrier for such persons, who must often rely for travel on specially adapted vehicles or other special means of transportation. Like the exclusion of unusual transportation expenses as an educational cost, this exclusion would be of an amount equal to the amount spent in the previous calendar year to the extent that it exceeds the reasonable commuting expenses which would have been incurred by a nondisabled person using an appropriate means of transportation for such purpose, including public transportation if available.

Net Worth Determinations

Under existing law and regulations, no specific dollar limit is placed on the amount of a beneficiary's or prospective beneficiary's net worth in order to determine eligibility for pension. Rather, the VA's authority is to deny or discontinue pension benefits if it determines, under all the circumstances, including the consideration of the beneficiary's income, that some portion of the net worth could reasonably be used for his or her maintenance. This permits individualized determinations in each case. The Committee bill continues this approach for improved pension beneficiaries.

Consistent with the provisions of the Committee bill requiring that the income of veterans and survivors receiving improved pension be

considered together with the income of the dependent family members for whom they are receiving increased improved pension benefits, and, in the case of surviving children, the incomes of persons with whom such children reside who are legally responsible for their support, the Committee bill requires evaluations of the estates—the "net worth"—of such persons. "Net worth" generally means the value of a person's assets, such as a home, an automobile, bank savings and checking accounts, stocks, bonds, or real property, minus the amount of liabilities such as mortgages and other debts. Under existing law, net worth determinations are required of pension applicants and recipients, but not of a veteran's or surviving spouse's dependent family members.

By regulation (38 C.F.R. 3.263(b)), the VA excludes from net worth determinations the entire value of a recipient's home and reasonable personal effects. The Committee bill is not designed to change the VA's interpretation permitting this reasonable exclusion, which is generally consistent with similar exclusions in other need-based income-maintenance systems such as SSI. In addition, the Committee bill would expressly authorize the exclusion from any child's net worth of reasonable amounts set aside for the child's educational or other similarly worthwhile vocational goals.

Effective Date of Reduction or Termination of Improved Pension Benefits

The Committee bill provides that the effective date of a reduction or termination of improved pension benefits resulting from an increase in income or net worth would be the end of the month in which the increase occurs. Under existing law, such effective date is the end of the calendar year in which the increase occurs.

Although beneficially intended, this provision—known as the "end of the year rule"—may cause unanticipated hardship, as in the situation where a person receives an increase in income early in the year—for example, February—and increases his or her standard of living as a result. No reduction in pension is made until the following January—and the decline which then occurs in aggregate income may seem almost punitive. For the 10-month period, however, pension benefits were predicated on the person's income prior to the increase—and consequently, during that period, not truly reflective of need. By changing the "end of the year rule" to an "end of the month" rule, the Committee bill would thus prevent the new program from countenancing a practice so at variance with the general principles of need-based income maintenance systems, and assures that the payment of improved pension benefits is commensurate with need.

Reporting Requirements and Exemptions From Annual Reporting

The Committee bill requires, as a condition of eligibility for improved pension benefits, that applicants and recipients provide information relating to their incomes and net worths, and the incomes and net worths of persons on behalf of whom they are applying for or receiving increased improved pension. A surviving child would be required to report his or her income (other than current-work income that is less than $2,950) and net worth as well as the incomes and net worths of persons with whom he or she resides who are legally responsible for the child's support. Such information would be required of

all persons applying for or electing improved pension benefits, and annually thereafter in order to verify eligibility. In addition, the VA is given discretionary authority to require such information at any time. Current law provides for similar reporting requirements, except that the incomes of dependent children are not required to be reported, nor are the net worths of dependent family members.

Material increases in income or net worth or changes in the status or number of dependent family members would also be required, as under current law, to be reported promptly. These requirements are essential to assure proper payments of improved pension benefits and to minimize overpayments, the recoupment of which is administratively burdensome and may create undue personal hardship.

The Committee bill provides for an express exemption, under regulations to be prescribed by the VA, from the annual reporting requirement for persons in categories of persons all of whose nonpension income is regularly received from a Federal program. Under existing law, persons aged 72 years or older who have been receiving pension benefits for 2 years or more and all surviving children are excepted from the requirement of annual reporting.

The present exemption for surviving children is appropriate because under current law the child's earned income is entirely excludable for pension purposes, and it is believed that most such children's countable incomes do not exceed the income limitation. However, the provisions in the Committee bill applicable to children's income render this blanket exemption inappropriate—although, of course, the current-work income of dependent or surviving children would not be required to be reported unless it exceeds $2,950 annually.

The present exemption for persons aged 72 or over is justifiable to the extent that such persons live on fixed monthly incomes but is equally justifiable with respect to persons living on fixed monthly incomes who have not reached the age of 72.

Under the bill, the VA would be authorized to provide by regulation for the exemption from annual reporting of persons in categories of persons all of whose nonpension income is regularly received and derived from a Federal program such as social security, civil service retirement, or railroad retirement. In exercising this authority, the Administrator would generally relieve most persons in the improved pension program who are age 72 or over, as well as many others who have not reached that age, from the burden of annual income reporting.

While annual reporting may appear to be a burdensome requirement, particularly for infirm persons of advanced age, the Committee is aware of many cases where exempted persons have not always been properly advised of the unreimbursed medical expense exclusion provided under current law even though the VA sends to each exempted person an annual computer-card notice containing information about the exclusion. The Committee bill, particularly by providing for special exclusions applicable to current-work income and unreimbursed medical expenses, would, it is believed, be beneficial to many persons who are currently exempted. The Committee strongly urges the VA to remind exempted persons on an annual basis of the reimbursed medical expense exclusion and of the necessity to submit to the VA such documentation as may be required to support the exclusion. This should be done in a clear and understandable fashion, with an appropriate evaluation of the means adopted.

Election of Benefits Under the Improved Pension Program

The Committee bill provides that, with the exception of persons residing outside the United States on the effective date of the new program, any person receiving pension benefits under existing law may elect to receive benefits under the improved pension program and that, if improved pension is paid at any time pursuant to such an election, the election would be irrevocable. Thus, persons receiving pension based on service during the Indian wars or the Spanish-American War, those receiving "old law" pension, and those receiving pension under the current pension program based on service during World War I, World War II, the Korean conflict, or the Vietnam era, would be able to elect the new program. The election would be irrevocable only if improved pension is actually paid to such a person.

Under the bill, veterans and survivors who elect improved pension benefits within 3 months of the bill's effective date (October 1, 1978) would receive improved pension benefits retroactive to the effective date to the extent that those benefits exceed pension benefits already paid to such persons.

Under existing provisions of title 38, United States Code, pension benefits (and other income-maintenance benefits under laws administered by the VA) are generally retroactive to the date of application. However, if the benefits are based on the death or disability of a person, the benefits are retroactive to the date of such death or disability, but only if the application is received within 1 year of such date. These provisions ensure that pension benefits fulfill their intended purpose of income maintenance and prevent "windfalls", and the bill makes no changes in those very necessary provisions. By authorizing limited retroactivity for pensioners who make timely elections, the bill encourages prompt elections by those who would be benefited.

Protection of Existing Program Rights—"Grandfathering"

The Committee bill would make no changes in the existing programs other than to provide that no person (other than a person who is residing outside the 50 States and the District of Columbia on the effective date of the new law) who applies for pension benefits on or after the effective date of the new law may receive benefits under any of those programs.

Also, the Committee bill expressly provides that none of its provisions is intended to affect the existing rights of any person receiving benefits under the current pension program or the "old law" program, as in effect on the day before the effective date of the new programs, to receive benefits for which he or she is eligible. Moreover, if an application is pending on the effective date and the person is found to be eligible on the basis of such application for one of the existing programs, he or she may receive benefits under that program in lieu of improved-pension benefits. This provision is intended to extend the opportunity so to elect participation in an existing program only with respect to the initial adjudication (including appeals) of the application which was pending on the effective date of the new programs, and that any subsequent reopening of a case should not be considered action on the original application.

Under the improved program, persons with annual countable income above the applicable income standards would not be eligible

for the new program. Thus, these provisions—known as "grandfather clauses"—ensure that no veteran or survivor currently receiving benefits will have those benefits reduced or terminated because of the enactment of the new program.

However, it should be clearly understood that those benefits, like improved pension benefits, would continue only as long as the pensioner remains eligible. Because of the interaction between social security cost-of-living increases and the current pension program, there are some veterans and surviving spouses who will be terminated from the current program in January 1979, not because of the enactment of the Committee bill, but because the increase in their social security income means that their annual "countable" income will be in excess of the income limitation. Such persons are generally those currently receiving the minimum pension of $5 per month; and in all such cases, the rise in their social security benefits will more than offset the loss of pension benefits—so that the aggregate income of these persons will decline only slightly. For example, in the case of a single veteran receiving a $5 monthly pension in December 1978 (after the effective date of the new program), based on monthly social security income of $341, only 90 percent of that income is counted by the VA, so that the countable income is within the annual income limitation of $3,770 ($4,092 minus $409=$3,683) and the veteran's annual pension is $60. In July 1978, this veteran would have received a 6.5-percent increase in social security benefits, making the social security benefit $363.17 monthly and $4,358 annually. In January 1979, the veteran's pension entitlement would be redetermined on the basis of the increased social security benefits—being paid at the annual rate of $4,358—and because the veteran's new annual countable income of $3,923 will exceed the $3,770 income limitation, the veteran's pension would be terminated. The loss of $60 per year in pension benefits would, however, represent an almost negligible decline in aggregate income—about 1.4 percent.

However, such a veteran might be eligible for improved pension benefits if he or she has substantial unreimbursed medical expenses, or is in need of regular aid and attendance.

It may be anticipated that in the first years following enactment of the Committee bill, there will be cases in which recipients of pension benefits under the current program will become ineligible to continue under that program because of cost-of-living increases in their social security incomes. However, any of those persons whose countable nonpension incomes are below the applicable income standards provided for under the Committee bill would be eligible for benefits under the improved pension program.

Pension Benefits for Persons Residing Outside the 50 States and the District of Columbia—VA Study

The right to elect benefits under the improved pension program would be restricted to those persons living in the 50 States and the District of Columbia on the effective date of the Committee bill. This restriction is considered advisable because the need-based income maintenance benefits under the improved pension program are keyed to poverty guidelines based on economic data and the rise in the Consumer Price Index in the United States. Likewise, the automatic

annual cost-of-living increase provided for under the bill would be determined by the rise in the Consumer Price Index—which is based on rising prices in the United States.

In many places outside the 50 States and the District of Columbia, the amount of pension needed to maintain the standard of living which improved pension benefits would make possible in the United States may be substantially lower than the benefit levels provided in the new program. In addition, the relevant inflationary factors may be very different from those affecting the Consumer Price Index in the United States. In the Committee's view, a final decision with respect to extending improved pension benefits—or modified improved pension benefits—to such persons requires further study.

The Committee bill would require the VA to conduct a comprehensive study and analysis of the issues relevant to the payment of nonservice-connected pension benefits to such persons. The study would include analyses of various relevant aspects of the economy of each foreign country and each territory, possession, and Commonwealth of the United States in which a substantial number [1] of such persons reside, such as the rate of inflation, the standard of living, and subsistence levels; estimates of the present and future costs of the payment of pension benefits to such persons; and estimates of the potential costs of paying improved pension benefits to such persons.

The Committee emphasizes that this listing of relevant aspects of the economies of foreign countries and U.S. possessions and Commonwealths is not intended to be all-inclusive. There may well be several other economic factors which should be carefully analyzed.

The following table indicates the number of veteran beneficiaries living in selected countries:

TABLE 14.—*Pension veteran beneficiaries living in selected countries*

	Number of veteran pensioners, June 1977
Possessions and U.S. Commonwealths:	
Canal Zone	7
Guam	13,010
Puerto Rico	13,409
Samoa	39
Virgin Islands	76
Countries:	
Australia	41
Canada	559
France	91
West Germany	54
Great Britain	123
Greece	758
Ireland	288
Israel	57
Italy	1,702
Japan	13
Mexico	212
Norway	167
Panama	8
Philippines	3,349
Spain	57
Sweden	143
Switzerland	24

Source: Veterans' Administration, Department of Veterans Benefits.

[1] In the Committee's view, a substantial number of beneficiaries is any number exceeding 400 persons, including survivors as well as veterans, as of June 1977.

The VA would be required to submit a report on the results of the study no later than February 1, 1979, together with its recommendations on the desirability of modifying the pension program and of extending the improved pension program—or a modified improved pension program—to such persons.

The Committee strongly urges the VA to plan and carry out this study promptly, with due consideration for executive branch clearance processes, so that it will be submitted to the Congress in timely fashion.

Improved Dependency and Indemnity Compensation for Surviving Parents

The Committee bill provides for an improved program of dependency and indemnity compensation (DIC) benefits for the needy surviving parents of veterans who died as a result of their service-connected disabilities. The improved DIC program, closely modeled after the improved pension program, corrects anomalies, inequities, and inconsistencies in the existing parents' DIC program which are very similar to those identified in the existing pension program.

Background

The parents' DIC program was established in 1956 under Public Law 84-881 and replaced the earlier "death compensation" program. Under existing law, parents' DIC is a need-based income maintenance program for the surviving parents of veterans who on or after January 1, 1957, died in service or after service as a result of service-connected disabilities. Eligibility is limited to parents whose annual income does not exceed specified income limitations, and benefits are determined pursuant to a rate-decrement-income-limitation formulas similar to those adopted for the pension program. Although parents' DIC is a service-connected program, it is need-based and benefits are established in a manner similar to that used in the pension program; as a result, laws providing for cost-of-living increases in the pension program have applied the same percentage increases to the maximum rates and the annual income limitations of the parents' DIC program. The previous pension-reform measure, S. 2635 (passed by the Senate in 1975), would have restructured that program along the lines of the new pension program envisioned by that measure.

Many of the inequities, anomalies, and inconsistencies which have developed in the pension program also occur in the present parents' DIC program. The current maximum benefits payable to a parent with no other income are extremely low—$152 per month to one parent or $102 per month to each parent if the parents are living together. In the case of a remarried parent, the incomes of the parent and the spouse are combined to determine the DIC amount payable to the parent. DIC benefits payable to such a remarried parent are the greater of (1) the amount payable to a single parent (annual income limitation of $3,770) or (2) the amount payable to each parent if two parents are living together (annual income limitation of $5,070). Rate-decrement-income-limitation formulas like those in the existing pension program are used to determine actual benefit rates. If the parent's countable income is within the income limitation, but exceeds the amount which would yield any benefit under the formula, the DIC payment cannot be less than $5 monthly.

A parent in need of regular aid and attendance receives an additional $79 per month. Annual income determinations, income exclusions, and annual reporting requirements are similar to those in the existing pension program. However, no net worth determination is required of DIC parents.

The following table shows the number of parents receiving death compensation of DIC benefits, by period of war, as of March 1978:

TABLE 15.—ACTIVE DEATH COMPENSATION AND DIC CASES, MARCH 1978

Entitlement	DIC and death compensation parent beneficiaries
Total:	80,177
Death compensation	62,324
DIC	4,558
DIC and compensation [1]	
World War I:	77
Death compensation	141
DIC	3
DIC and compensation	
World War II:	62,053
Death compensation	24,962
DIC	3,254
DIC and compensation	
Korean conflict:	14,804
Death compensation	5,599
DIC	1,008
DIC and compensation	
Vietnam era:	15
Death compensation	22,074
DIC	20
DIC and compensation	

[1] Persons receiving DIC who were formerly entitled to receive death compensation.

Benefits to the survivors of a veteran who died as a result of service-connected disability, under laws administered by the VA, are predicated on the theory that the veteran's death results in a loss of the income support to the veteran's survivors, support which the veteran would have provided had it not been for his or her death in service or as a result of service. The obligation of the Government to indemnify and compensate the survivors whom the veteran was morally and legally obligated to support is clear. Consequently, the surviving spouses and children of such a veteran are entitled to receive monthly DIC benefits without regard to need as measured by income and net worth. A surviving spouse may receive DIC benefits until he or she remarries, and if the new marriage is terminated by reason of death or divorce, the surviving spouse regains eligibility for DIC. Children may receive DIC payments until they reach the age of 18, or for a longer period if they are attending school or have become helpless before reaching the age of 18. In each case, the moral and legal obligations of the veteran are assumed by the Government.

The theory underlying the payment of DIC benefits to surviving parents is also related to the loss of income support which may result from the veteran's death. In former times, the legal obligation of an adult to support aging parents who were no longer able to support themselves—particularly, one's widowed mother—was sanctioned under most State laws. Even where such laws were not vigorously enforced, many persons assumed this obligation. Moreover, the loss of a son in service was recognized not only as a personal tragedy but, to some extent, an economic sacrifice. Thus, laws providing for "death

compensation" to benefit such a veteran's survivors included not only surviving spouses and children but also parents. However, in recognition that the legal obligation of an adult to support needy parents was less clear than such a person's obligation to support a spouse or child, death compensation benefits payable to surviving parents required a showing that the parent would have been dependent on the veteran had the veteran lived. Once such dependency was established, the parent was entitled to receive death compensation in fixed monthly amounts without regard to need.

In 1956, as noted, Congress supplanted the death compensation program with DIC. Death compensation payments were continued to the parent of any veteran who died before January 1, 1957; the needy parents of a veteran dying after that date became eligible for the new need-based DIC program under which no dependency test was required.

Committee bill provisions

Under the Committee bill, a program of improved DIC benefits would be established for the surviving parent or parents of a veteran who died as a result of service-connected disability, if such veteran provided one-half or more of the support of such parent or parents during the 1-year period immediately preceding the veteran's death. This requirement of actual dependency on the veteran by the parent is similar to the dependency requirement of the Social Security Act which must be met before social security survivors' benefits may be paid to the surviving parent of a deceased wage earner.

Under the Committee bill, the maximum annual rates payable under the improved DIC program (based on improved pension rates) would be as follows:

TABLE 16.—*Improved DIC rates for surviving parents*

One parent or each parent, if the parents are living apart	$3,240
Two parents living together	4,284
One parent (or each parent, if the parents are living apart) in need of regular aid and attendance	5,340
Two parents living together, one of whom is in need of regular aid and attendance	6,384
Two parents living together, both of whom are in need of regular aid and attendance	8,

The increased rates in cases in which both parents (living together) are in need of regular aid and attendance reflect the Committee's view that each parent is a "primary beneficiary".

The substantially increased benefit levels and the requirement of a dependency test—measured by the receipt of one-half or more support from the deceased veteran during the 1-year period immediately preceding the veteran's death—reflect the Committee's judgment that the Government's obligation to the parent of a veteran who died as a result of service-connected disability is two-fold: First, to acknowledge the moral obligation of the veteran by continuing to support his or her dependent parents in cases where the veteran had actually assumed such an obligation and provided support; and second, in such cases, to assure such parents of income maintenance above the poverty guidelines.

Like pensioners, DIC parents who have social security income may receive annual reductions in DIC benefits attributable to a social se-

curity cost-of-living increase; the effect of DIC rate increases has been, in many cases, merely to diminish the size of the reduction, as it is in the current pension program.

Under the improved parents' DIC program, annual income determinations, income exclusions (including the current-work income exclusions), net worth determinations, and annual reporting requirements would be similar to those under the improved pension program. In the case of a remarried parent, the income of the spouse—if the parent is living with such spouse—would be considered as the income of the parent, to the extent reasonably available to or for the parent. The net worth of the remarried parent's spouse would be considered in a similar fashion.

Parents currently receiving DIC or death compensation benefits would be entitled to elect improved benefits if they meet the eligibility requirements and reside in one of the 50 States or the District of Columbia. Persons not residing in the United States, and those who are ineligible for improved parents' DIC, may continue to receive benefits, if they continue to be eligible therefor, under the provisions of law in effect on the day before the effective date of the new program. Also, parents residing outside the 50 States or the District of Columbia on the effective date of the new program who become eligible on or after that date would be entitled to apply for and receive benefits under those existing provisions if they continuously reside outside the 50 States and the District of Columbia and they remain eligible under such provisions.

Improved Pension and Parents' Dependency and Indemnity Compensation Rates Automatically Indexed to Consumer Price Index

Annual automatic cost-of-living adjustments

The Committee bill includes provisions, known as "indexing provisions", under which annual automatic cost-of-living increases are made in benefit levels in order to prevent the value of benefits from being eroded by inflation. These increases would take place annually at the same time and by the same percentage as cost-of-living increases in social security benefits. Each of the maximum annual rates—income standards—would be increased by the same percentage. If, for example, social security benefits beginning with those payable in any month were to be increased by 6 percent, the effect of such an increase on the annual maximum rates (income standards) of improved pension would be as follows:

TABLE 17.—EFFECT OF INDEXING PROVISIONS IN COMMITTEE BILL

	Before 6 percent increase	After 6 percent increase [1]
Veteran without dependent family member	$3,240	$3,435
Veteran with 1 dependent family member	4,284	4,542
Veteran in need of regular aid and attendance without dependent family member	5,340	5,661
Veteran in need of regular aid and attendance with 1 dependent family member	6,384	6,768
Veteran permanently housebound without dependent family member	4,016	4,257
Veteran permanently housebound with 1 dependent family member	5,060	5,364
Each additional dependent family member	660	700

[1] Amounts rounded to next highest dollar.

The bill requires that the new annual rates be published in the Federal Register at the same time that the Social Security Administration is required to publish certain information relating to the percentage increase to be applied to social security benefits.

Under section 215(i)(1) of the Social Security Act, as amended (42 U.S.C. 415(i)), the Secretary of the Department of Health, Education, and Welfare determines in each year whether the increase in the Consumer Price Index (CPI), published monthly by the Department of Labor, during a "base quarter" is more than 3 percent over the CPI during a previous year's base quarter. The CPI for the base quarter is determined by averaging the CPI for the 3-month period, and the base quarter generally is the first quarter of the calendar year (January 1 through March 31). If the CPI increase is 3 percent or more, the base quarter becomes a "cost-of-living computation quarter". Generally, the benefit increase for social security recipients will be based on the percentage increase in the CPI of the most recently determined cost-of-living computation quarter over the corresponding computation quarter of the previous year.

If there has been a determination that a base quarter is a cost-of-living computation quarter, the determination is published in the Federal Register within 45 days after the close of the quarter (generally, by May 15). Also published are the required percentage of benefit increase and various required revisions of benefit schedules. Such publication is designed to assure prompt notice to beneficiaries and other interested parties of the amount of the benefit increase.

The Committee bill would require that the Veterans' Administration, in similar fashion, publish the new annual rates of improved pension—in any year in which there is to be a cost-of-living increase in social security benefits—in the Federal Register at the same time as the social security information is published.

Some reservations have been expressed that the indexing provisions—by removing the necessity for the Veterans' Affairs Committees of both Houses of Congress to give attention annually to pension rate increases to counter the effects of inflation—would diminish the role of the pension program in the Committee's annual deliberations. The Committee would like to stress its belief that such reservations are unwarranted and that it intends no future diminution of the emphasis placed on the pension program in its work. Rather, the indexing provisions will give the Committee a better opportunity to examine in greater depth the operations of the improved program and any future proposals for its modification.

The indexing provisions are equally applicable to the improved dependency and indemnity compensation (DIC) program. Like pensioners, these surviving parents are often living on fixed incomes particularly vulnerable to inflation, and the problem of annual reductions in DIC benefits attributable to a social security cost-of-living increase occurs in this program as well. Under the improved DIC program for surviving parents, no parent who has social security income as well as improved DIC will suffer any such reduction attributable to social security cost-of-living increases. Rather, such a parent will be assured of annual cost-of-living increases in his or her improved DIC income, as will parents whose entire income consists of improved DIC payments.

The Committee bill would also provide for annual automatic increases, by the same cost-of-living percentage applied to rates, in the dollar amounts of the exclusions of current-work income. Under the bill, these are $780 in the case of veterans, surviving spouses, and surviving parents not in need of regular aid and attendance and $1,560 in the case of veterans, surviving spouses, and surviving parents in such need. The $780 and $1,560 exclusions (plus one-half of the remainder) also applies to the income from current work earned by any dependent or surviving child with earnings that exceed the amount of income required to file a Federal income tax return. These amounts—$780 and $1,560—would be annually adjusted, and the increased amounts would be published in the Federal Register at the same time as the new annual rates of improved pension and improved DIC. Thus, the special benefit provided by this exclusion would not be diminished by inflation.

Annual redeterminations to prevent reductions in improved pension benefits attributable to social security cost-of-living increases

During the month in which the increased annual rates become effective, which is the month prior to which increased benefits would actually be paid, the VA would be required to redetermine the amount of improved pension benefits to be paid to those recipients who also have social security benefits or other Federal benefits which are indexed in accord with social security benefits. The VA would be required to annualize the new social security monthly rate and, based on the new annualized social security rate and the increased annual maximum rate of improved pension, redetermine a recipient's improved pension entitlement accordingly. The following example explains how this would work.

Example

A veteran who has no dependent family members is receiving in June 1979, social security benefits of $210 per month. Annualized, this represents social security income of $2,520 per year. Based on this income, the veteran's improved pension entitlement would be $720 annually, payable in monthly amounts of $60, so that the veteran's aggregate income is $270 per month and $3,240 per year. In June 1979, social security benefits payable in July are increased by 6 percent. At the same time, the annual improved pension income standard would be increased by 6 percent, from $3,240 to $3,434.40. In July, the veteran would receive a social security benefit payment of $222.60 ($210×1.06=$222.60) and an improved pension benefit payment of $63.60 ($60×1.06=$63.60). The veteran's aggregate monthly income beginning in July 1979, would now be $286.20, exactly 6 percent over his or her monthly income in the previous month, and exactly the amount of the new income standard ($3,434.40) divided by 12.

This example has been worked out using an increased annual income standard with a fraction of a dollar, in order to illustrate precisely the effect of these provisions on a hypothetical case. Under the bill, the VA would be permitted to round off the increased annual rate in the manner deemed appropriate and equitable. In the Committee's view, an appropriate and equitable means of rounding is one which would give expression to the Committee's intention that no per-

son receiving improved pension benefits should suffer any reduction, even a fraction of a dollar, in those benefits that could be attributed to a social security cost-of-living increase. Rounding these amounts to the next highest dollar would provide assurance that this intention has been carried out. Under no circumstances would the Committee regard "rounding down" as equitable if the fractional amount in an increased income standard were 50 cents or more.

Revision of Consumer Price Index

In January 1978, the Bureau of Labor Statistics of the Department of Labor announced that it was shortly to begin publication of a revised wage earners and clerical workers Consumer Price Index and a new All-Urban Consumer Price Index. In order to provide a smooth transition, the unrevised CPI would be continued through June 1978. Those changes, underway for about 5 years, culminated in the publication of 3 different indexes beginning in February 1978, for the month of January 1978: The unrevised CPI, the revised CPI ("CPI–W"), and the new all-urban CPI ("CPI–U").

In 1978, social security benefits have been adjusted by reference to the CPI–U, but no decision has been made as to whether adjustments in future years will be made by reference to the CPI–W or the CPI–U. The Committee intends to monitor this situation carefully and urges the VA to take an active part in the interchange of Administration and Congressional views on which index is most appropriate for social security beneficiaries, since the decision ultimately made will determine the standards for providing improved-pension cost-of-living increases.

Implementation

The implementation of the improved pension and parents' DIC programs would require the VA to notify present beneficiaries of their right to elect benefits under the new program and should include information clearly presented to aid such persons in determining whether they are eligible and whether their benefits would be increased under the improved programs. In addition, all such persons should be clearly and promptly advised of their right to continue under their present programs. The Committee believes that clear, thorough orientation of pension beneficiaries as to the benefits of the improved program would facilitate its implementation by assisting such persons to make prompt elections where appropriate. The provision allowing for a limited retroactivity period—3 months from the bill's effective date—is expressly designed to encourage timely elections. Fulfilling this purpose would necessitate prompt action on the part of the VA.

Although the bill does not modify the existing programs (other than by the provisions relating to new applicants) and in many ways the bill's provisions are very similar or identical to existing program requirements, other provisions differ greatly or have no counterparts in the existing programs. To aid present and prospective beneficiaries in understanding particular provisions, the VA would be well advised to include in a program of public information the services of Veterans' Benefits Counselors who have been specifically trained to explain the provisions of the improved programs and to respond to particular questions that might arise. In connection with the current-work income

exclusions, the Committee strongly urges the VA to provide clear explanations of the purpose of this exclusion as well as its significance in individual cases. Stressing the importance of good recordkeeping on the part of beneficiaries, particularly with respect to the unreimbursed medical expenses exclusion, with individualized assistance to those who may need it, would also be desirable. The Committee believes that the period of transition from the "current law program" to the improved pension program may continue for some period of time, but feels strongly that appropriate, timely implementation can assure that the difficulties necessarily involved in that transition are minimized.

Cost-of-Living Increase and Other Improvements in Pension Payable to Institutionalized Single Veterans

The Committee bill provides for a cost-of-living increase in the maximum pension benefits payable to a veteran who has no dependent family members and who is institutionalized at VA expense in a domiciliary, nursing home, or hospital.

Under the existing provisions of section 3203(a) of title 38, the maximum pension payable to such a veteran may not exceed $50 per month after the end of the second full calendar month following the month of admission for treatment or care. If the veteran has been readmitted for treatment or care within 6 months following the termination of a period of care which lasted not less than 2 full calendar months, the maximum pension payable after the month of such readmission cannot exceed $50. A reduction in pension benefits to such veterans is appropriate since all such veterans receive their essential income-maintenance needs—food, shelter, and medical care—at VA expense. The limited amount payable is provided for out-of-pocket expenses for personal and recreational expenses.

The provision for a reduction in benefits in such cases was adopted in Public Law 86–211, the Veterans' Pension Act of 1959. Public Law 93–177 increased the maximum pension payment to an institutionalized veteran without dependent family members from $30 per month to $50, the present maximum.

Under the Committee bill, the maximum pension payable to a veteran residing in a VA domiciliary facility could not exceed $60 per month after 2 months of such residence. If the veteran is receiving VA hospital or nursing home care, the Committee bill would permit such a veteran to receive benefits without any reduction for 3 months following the month of his or her admission for such care, and for an additional 3 months if it is determined that the veteran's return to the community would be facilitated by such a continuation of the full rate. After 3 months or 6 months, as the case may be, the maximum pension could not exceed $60 per month. This provision reflects the recognition of the fact that in many instances, a veteran's desire to return to the community may be frustrated if during his or her hospital or nursing home stay, bills for necessary expenses, such as rent, have not been paid.

The Committee bill also provides a cost-of-living increase in the maximum pension payable to a veteran with no dependent family members who is readmitted for care within 6 months after a period of care lasting 2 full calendar months or more. In such cases, pension

benefits otherwise payable would be reduced after the veteran's readmission (effective with the following month's benefit payment) to a maximum of $60 per month.

Naming of Certain Veterans' Administration Hospitals

The Committee bill would name two VA hospitals located in Tampa, Florida and Bedford, Massachusetts, as the James A. Haley Veterans' Hospital and the Edith Nourse Rogers Memorial Veterans' Hospital, respectively.

The proposed James A. Haley Veterans' Hospital in Tampa, Florida, would be named after former Congressman James A. Haley. S. 1925 was introduced by Committee Member Senator Richard (Dick) Stone for this purpose on July 26, 1977. On September 9, 1977, Amendment No. 839, with the same provisions, was added to H.R. 5027, which was then passed by the Senate and is awaiting action in the House of Representatives.

This provision honors Congressman Haley's distinguished service during his 24 years as a member of the House and his meritorious performance as a member of the Veterans' Affairs and Armed Services Committees of that body. As Chairman of the House Veterans' Affairs Committee's Subcommittee on Medical Facilities and Benefits for 18 years, Congressman Haley provided effective leadership in bringing about significant improvements in VA health and hospital care.

H.R. 5027 was also amended (Unprinted Amendment No. 790) to honor the memory of Congresswoman Edith Nourse Rogers by naming the VA hospital in Bedford, Massachusetts, as the Edith Nourse Rogers Memorial Veterans' Hospital. Edith Nourse Rogers, who died in 1960, is alive in the memories of all who knew of her great concern for our Nation's veterans. This concern was first evidenced during World War I in her Red Cross work on behalf of the war disabled. After her election to Congress in 1925, she worked tirelessly to ensure fair treatment for veterans. First elected to the 69th Congress, she was reelected to 17 terms and was Chairman of the House Veterans' Affairs Committee during the 80th and 83d Congresses. The naming of the Bedford VA hospital as the Edith Nourse Rogers Memorial Veterans' Hospital will ensure that her accomplishments in the field of veterans' affairs are not forgotten.

COST ESTIMATE

In accordance with section 252(a) of the Legislative Reorganization Act of 1970 (Public Law 91-150, 91st Congress), the Committee, based on information supplied by the Congessional Budget Office, estimates that the 5-year costs resulting from the enactment of the Committee bill would be $743.6 million in fiscal year 1979; $1,038.9 million in fiscal year 1980; $1,385.4 million in fiscal year 1981; $1,806.1 million in fiscal year 1982; and $2,271.6 million in fiscal year 1983.

Those costs indicate the increased budget authority required for each fiscal year; they are based on the assumption that, in the absence of pension restructuring legislation along the lines of the Committee bill, Congress would not enact any cost-of-living increases in the current pension program. That assumption, however, in the Committee's view, is not realistic in view of continuing inflation and Congressional

actions in the last decade granting cost-of-living increases. Rather, it is much more realistic to measure the costs of the Committee bill against the "current policy" costs of the present program—that is, against the estimated costs of the present program including future cost-of-living increases which could be expected if the Committee bill were not enacted. The CBO estimate of the 5-year costs of the Committee bill in those terms, is as follows:

[*By fiscal years, in millions*]

1979	$501.7
1980	566.6
1981	623.1
1982	740.4
1983	889.3

In addition, the Committee reiterates that the OMB long-range cost estimate of the "maximum" costs of the current program discussed at an earlier point in this report, compared to the estimated long-range costs of the Committee bill, indicate that sizable cost savings—in the vicinity of $500 million—would be achieved by 1985 if the bill is enacted this year and those savings would rise thereafter.

Detailed breakdowns and a discussion of the costs of the Committee bill over the next 5 fiscal years, prepared by CBO, follow:

CONGRESSIONAL BUDGET OFFICE—COST ESTIMATE

1. Bill number: S. 2384.

2. Bill title: The Veterans' and Survivors' Pension Improvement Act.

3. Bill status: As ordered reported by the Senate Committee on Veterans' Affairs, March 23, 1978.

4. Bill purpose:

The bill would establish a new non-service-connected pension program for the veterans and survivors of the Mexican Border Period, World War I, World War II, the Korean conflict, and the Vietnam era. The new program which would take effect on October 1, 1978, would operate concurrently with the existing program. Those individuals who are receiving benefits under the existing program on the effective date of the bill would have the option of selecting whichever program offered them the higher benefit. Election of the reformed program, however, would be irrevocable, and all new cases would only be eligible for the reformed pension.

The maximum benefit levels set by S. 2384 would be $3,240 annually for a veteran with no dependents and $4,284 for a veteran with one dependent. Two levels of benefits would be instituted for surviving spouses. A surviving spouse who is disabled or over the age of 64 would be paid at the same rate as a veteran. If the surviving spouse does not meet these requirements, however, she/he would be paid at rates that are two-thirds those for veterans ($2,172 annually for a surviving spouse without dependents, and $2,868 for a surviving spouse with a child). The benefit level for all pensioners would be increased by $660 a year for each dependent after the first. All rates under the reformed pension program would be adjusted annually for increases in the cost of living using the same percentage by which social security benefits are raised. Such increases would be effective at the same time as social security increases.

The treatment of nonpension income under the reformed program would be based on the family-income concept, whereby the incomes of all beneficiaries in the family are treated the same. Under current law, for example, social security survivors' benefits paid to dependent children of surviving spouses or to children alone are not counted against their pension payment, on the theory that this money is considered a trust for the child's education. The reformed pension, however, would treat the income of children in the same fashion as the income of other family members, with the exception that the earnings of a child would only be considered to the extent that they exceed the minimum wages that a child must have before being required to file a Federal income tax return (currently $2,950).

Many of the exclusions of nonpension income permitted under current law would not be allowed in the reformed program. The exclusion of 10 percent of retirement or annuity income would no longer be permitted. The current provisions dealing with the income of a veteran's spouse would also be discontinued. A new exclusion, however, pertaining to current-work income would be established by S. 2384. The new provision would allow $780 of the earnings of all beneficiaries in the family to be excluded from countable income plus one-half of the remaining earnings. For veterans and surviving spouses who receive aid and attendance allowances, the current-work income disregard would be $1,560 plus one-half of the remainder.

Whereas the current pension program uses a formula rate structure to determine the payment level, the reformed program would employ the single-variable method now utilized by the Supplemental Security Income program. The pension payment would be calculated by subtracting countable income from the maximum benefit level.

S. 2384 would also establish a new program, very similar to the reformed pension, for parents of deceased veterans receiving Disability and Indemnity Compensation (DIC). Unlike the present requirements for DIC parents, however, new cases to the reformed DIC parents program would be required to show that they had been receiving one-half or more of their support from the veteran. The maximum benefit level for a single parent would be the same as that for a veteran alone, and two parents living together would receive the same rate as a veteran with one dependent.

The reformed pension program would only be made available to individuals residing within the 50 States and the District of Columbia. The current program would continue unchanged for all eligible individuals residing elsewhere.

5. Cost estimate:

[By fiscal years, in millions of dollars]

	1979	1980	1981	1982	1983
Benefit costs:					
Outlays	684.1	1,015.3	1,357.7	1,772.4	2,234.4
Savings:					
SSI	−56.7	−101.3	−150.9	−205.9	−251.5
AFDC	−15.2	−22.5	−30.5	−39.3	−48.9
Medicaid	−50.3	−90.9	−137.2	−190.8	−252.5
Net outlays	561.9	800.6	1,039.1	1,336.4	1,681.5
Required budget authority	743.6	1,038.9	1,385.4	1,806.1	2,271.6
Savings:					
SSI	−56.7	−101.3	−150.9	−205.9	−251.5
AFDC	−15.2	−22.5	−30.5	−39.3	−48.9
Medicaid	−50.3	−90.9	−137.2	−190.8	−252.5
Net required budget authority	621.4	824.2	1,066.8	1,370.1	1,718.7

The costs of this bill fall within budget function 700. The offsetting savings in the AFDC and SSI programs apply to function 600 and the offsetting savings in Medicaid to function 550.

6. Basis for estimate:

Cost model for VA benefit costs

The gross program costs of this bill were estimated through the use of a microsimulation model. The data base for this computer model is a 1 percent sample of all veteran and surviving spouse cases receiving pension under the currently active VA pension program. The sample, which includes the records of nearly 20,000 cases, was extracted from the master file of pension cases in March 1977. Each record contains, in addition to statistical data such as age, number of dependents, and period of military service, detailed data on the amounts and sources of income received by the case.

To compute the cost of pension program alternatives, the model operates on each of the 20,000 records individually. A case is first aged and mortality assumptions are applied. The nonpension income reported by the case is then updated, using specific economic indicators for each source of income. If the case is a current pension recipient, the model determines which pension program would return the highest payment amount. The case is then assigned to the most advantageous program and recycled through the procedures until all 5 years of the simulation have been completed. Once the model "switches" a case from the existing pension to reform pension, the model assumes the case to be ineligible under the old program in future years.

When the entire data base has been analyzed to estimate how current beneficiaries would behave given the choice of new or old pension benefits, the process is reinitiated to select new cases. An estimated number of new cases that could be expected to accede to the current program is used to represent the number of potential applicants to the reformed system. This number of cases, once it has been reduced to correspond to the sample size, is randomly selected from the data base of current recipients. These "new" cases are then analyzed in the same manner as current beneficiaries, with the exception that they are assumed to be eligible for the reformed pension only. Counts are kept of the movement and disposition of cases at every stage of the model operation by period of service, type of beneficiary, and year. These counts are then inflated to the full population size to calculate the cost of the proposal.

Other factors

It is not practical to show the cost of S. 2384 on a section-by-section basis, because a change in one section will affect the number of individuals who switch to the new program and, thereby, change the cost of other sections. A few sections which could not be handled by the microsimulation model, however, are discussed below.

Current-work income disregard

Section 564(a)(8)(B) (ch. 15, title 38, U.S.C.) is amended by this bill to provide an exclusion of $1,560 of earnings plus one-half the remainings for veterans and surviving spouses who are in need of aid

and attendance. The vast majority of those pensioners who are currently receiving aid and attendance allowances are quite elderly and, most likely, are not in a position to take advantage of this provision. Relatively young and catastrophically disabled veterans, however, could benefit substantially from this change. Under current law, earnings from any regular employment may well cause such veterans to exceed the income limits and terminate from the pension rolls, since the vast majority (over 90 percent) of them receive social security disability benefits. By losing their pensions, these veterans would also lose their eligibility for free VA health care, which, for catastrophically disabled veterans, can be of far more importance than their pensions. Under the new provision a catastrophically disabled veteran alone, for instance, could earn as much as $12,000 a year (if he had no other income) and still be eligible for a small pension and VA medical care.

Since there are a few catastrophically disabled veterans who are presently working in lieu of receiving pension, it is unlikely that this provision will add a significant number of cases to the pension rolls. For those cases now receiving pension, there should be some small savings as they gradually increase their earnings and attain self-sufficiency. The resulting savings would not be significant, however, as this population is quite small.

Payments to institutionalized pensioners

Section 206 of S. 2384 would increase from $50 to $60 the maximum pension payable to a veteran with no dependents who is being furnished hospital, nursing home, or domiciliary care by the VA. This section also provides that full pension benefits could be paid for as long as 6 months in the case of hospital and nursing home patients if it is shown that the extension of full benefits would facilitate the veteran's ability to return to the community. Based on information from VA that there were 7,430 such institutionalized pensioners in June 1977, the estimated cost of this provision is shown below:

[By fiscal years, in millions of dollars]

	1979	1980	1981	1982	1983
Outlays	1	1.1	1.2	1.3	1.4
Required budget authority	1	1.1	1.2	1.3	1.4

Counting children's income

In keeping with the family-income concept on which the reformed pension is based, S. 2384 provides that all income of dependent children and children alone (those children not in the custody of an eligible surviving spouse) would be considered in determining their pension benefit level. Although no data are currently available on the incomes of pension children, as they are not required to submit an annual income questionnaire, it is expected that the vast majority of children alone and dependent children of widows receive social security benefits in amounts sufficient to render the cases ineligible under the reformed program. Those children cases presently receiving pension would, therefore, remain under the existing pension program and have no impact on the cost of the new program. There would, however, be

substantially fewer new children cases under the reformed program than would be expected under the current program. The amount of the resulting savings cannot be determined with any precision given the data available.

DIC parents program

Title III of S. 2384 would establish a reformed program for parents receiving Dependency and Indemnity Compensation. Based on an April 1977 income distribution of these beneficiaries, the estimated cost of this provision would be as follows:

[By fiscal years, in millions of dollars]

	1979	1980	1981	1982	1983
Outlays	31.1	39.2	43.7	46.6	47.7
Required budget authority	33.8	39.6	44.1	47.1	48.2

Limiting eligibility to the 50 States

This bill would limit the eligibility for reformed pension to individuals residing within the 50 States or the District of Columbia. The present pension program would remain open to current and future eligibles who permanently reside outside of the United States. According to the Veterans' Administration's figures, there were 158,275 veterans and survivors living outside of the United States in fiscal year 1977. Pension benefits of $87.7 million were paid to such individuals in the same year. As there would be no change in the law as it applies to these beneficiaries, this provision would have no budgetary impact.

"Grandparenting" current recipients

In addition, S. 2384 would allow individuals who are receiving benefits under the current program on the effective date of the bill to remain under the provisions of current law or to elect to receive the new program as they see fit. Election of the reformed program can be made at any time, but once made, the switch is irrevocable. A similar election provision was contained in Public Law 86–211, which established the present pension program in 1960. A study made by the VA in 1966, 6 years after the enactment of the program, found that there were still over 100,000 cases who were losing money through failure to elect the new program. Unfortunately, there is insufficient data to determine what percentage this represents of the total number of pensioners who were initially expected to benefit from switching to the new program. Based on what little information is available from this study, it can be expected that some number of persons will choose not to elect the reformed program even though it would provide them with higher benefits.

The experience of Public Law 86–211 will not correspond directly to what would be expected to occur following the passage of S. 2384, however. Under the provisions of the earlier law, there were several reasons for some pensioners to refuse election. In some cases a pensioner could have lost money in the longrun by switching to Public Law 86–211 pension, even though the benefits were higher at the time of election, because of changes in the sources of the veteran's income. For this reason the veterans' service organizations did not support

Public Law 86–211 and did not encourage the pensioners in their membership to elect it.

Situations of this sort should not occur in the reformed pension program. If an individual is ever better off under reformed pension, that individual should always be better off under that program. Therefore, although the rate of switching to the reformed program will not be 100 percent of those who would benefit, it should be higher than the rate experienced after enactment of Public Law 86–211. This estimate assumes that every pensioner who would benefit by $1 or more from electing the reformed pension program will make the switch. Because past experience suggests that this may not happen for reasons which cannot be predicted, it is possible that the costs of S. 2384 could be lower than estimated for the first 5 years.

Budget authority

Although this bill would result in additional future Federal liabilities through an extension of an existing entitlement, the bill would require subsequent appropriation action to provide the necessary budget authority. These figures shown in the cost estimate above as "Required Budget Authority" represent that amount of budget authority needed to cover the estimated outays that would result from enactment of S. 2384.

The outlays shown in this estimate are lower than the budget authority, because pension benefits paid in any given month are the result of beneficiary entitlement in the prior month. The obligations created in each September, therefore, would not outlay until October, which would be in the next fiscal year.

VA costs assuming inflation in the current program

Although veterans benefits are not indexed for inflation, the nonservice-connected pension program has received legislated cost-of-living increases every year except one since 1971. Given this precedent, it may be of value to examine the cost of S. 2384 over the cost of the current program with annual cost-of-living adjustments. These costs are shown below for informational purposes only. They do not reflect the budgetary impact of S. 2384.

[By fiscal years, in millions of dollars]

	1979	1980	1981	1982	1983
Gross outlays assuming inflation in the current program[1]	501.7	566.6	623.1	740.4	889.3

[1] These are gross outlay estimates only. The offsets shown on p. 3 do not correspond to these figures.

7. Estimate comparison: The Veterans' Administration's cost estimate for S. 2384 is shown below. The small variance between the two estimates results primarily from the employment of different sets of economic assumptions.

[By fiscal years, in millions of dollars]

	1979	1980	1981	1982	1983
VA estimate: Costs	742.2	1,031.3	1,383.7	1,787.5	2,191.6

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8. Previous CBO estimate: During the 95th Congress, CBO has provided the Senate Veterans' Affairs Committee with cost estimates for a wide variety of pension reform proposals, including an estimate of S. 2384 as it was introduced. This, however, is the first cost estimate of S. 2384 in the form ordered reported by the full Committee.

9. Estimate prepared by: K. W. Shepherd (225–7766).

10. Estimate approved by:

C. G. Nuckols
(For James L. Blum,
Assistant Director for Budget Analysis).

Regulatory Impact Statement

In compliance with paragraph 5 of rule XXIX of the Standing Rules of the Senate, the Committee on Veterans' Affairs has made an evaluation of the regulatory impact which would be incurred in carrying out the provisions of the Committee bill. The results of that evaluation are described below according to the first three titles of the bill: I—Improved pension for veterans and survivors; II—Improved dependency and indemnity compensation for surviving parents; and III—Miscellaneous provisions and conforming amendments. Title IV (Naming of certain Veterans' Administration hospitals) and Title V (Effective dates) are expected to have no regulatory impact.

A. *Estimate of the numbers of individuals and businesses who would be regulated, and a determination of the groups and classes of such individuals and businesses:*

Title I.—Title I, which provides for a new program of improved pension benefits for needy wartime veterans who are permanently and totally disabled from non-service-connected causes or are 65 years of age or older, and for the needy surviving spouses and surviving children of wartime veterans, would not result in the regulation of any individuals or businesses.

Title II.—Title II, which provides for a new program of improved dependency and indemnity compensation benefits for the needy surviving parents of veterans who die of service-connected causes, would not result in the regulation of any individuals or businesses.

Title III.—Title III, which contains miscellaneous provisions and conforming amendments in connection with the benefit programs provided for in titles I and II of the bill, would not result in the regulation of any businesses or individuals.

B. *Determination of the economic impact of such regulations on individuals, consumers, and businesses affected:*

As indicated above, there would be no such regulations.

C. *Determination of the impact on the personal privacy of the individuals affected:*

Titles I, II, and III.—Financial and other personal disclosures similar to those required under the current pension and parents' DIC programs would be required of all persons applying for or receiving improved pension or parents' DIC benefits under the new programs. Such disclosures would include information about income, net worth, the dependency status of family members, and other information necessary to establish eligibility, and would generally have a significant impact on the personal privacy of the affected individuals only with respect to financial matters.

D. *Determination of the amount of additional paperwork that will result from regulations to be promulgated under the bill:*

Titles I, II, and III.—Regulatory changes anticipated under the Committee bill will generate substantial additional paperwork as follows:

(1) Notification of the 2.8 million present beneficiaries of the implications of the new programs with respect to those beneficiaries;

(2) Processing of the applications for present beneficiaries who elect to apply for the improved programs;

(3) Internal directives and memoranda required to implement the new programs; and

(4) Publication of information and revised forms to assist in the implementation of the new programs.

Section-by-Section Analysis of S. 2384 as Reported

Section 1

Provides that this Act may be cited as the "Veterans' and Survivors' Pension Improvement Act".

TITLE I—IMPROVED PENSION FOR VETERANS AND SURVIVORS

Section 101

Clause (1) of subsection (a) of section 101 amends chapter 15 of title 38, United States Code, entitled "Pension for Non-Service-Connected Death or for Service" by redesignating subchapter IV thereof, entitled "Army, Navy, Air Force, and Coast Guard Medal of Honor Roll", as subchapter V, and by redesignating sections 560, 561, and 562 as sections 571, 572, and 573, respectively.

Clause (2) of subsection (a) of section 101 amends chapter 15 of title 38, United States Code, by inserting a new subchapter IV, entitled "Improved Pension for Non-Service-Connected Disability or Death", providing for a new need-based pension program, to be known as "improved pension", for certain non-service-connected disabled or elderly veterans of a period of war and the survivors of veterans of a period of war who die from non-service-connected causes.

New subchapter IV consists of new sections 561 througr 567.

New section 561, entitled "Improved pension for veterans of a period of war", consists of subsections (a) through (h), as follows:

Subsection (a). Provides for the payment of improved pension, at the rates prescribed in subsections (b) through (g) of this section, to any veteran of a period of war who meets the service requirements *prescribed in subsection* (h) of this section, and who is permanently and totally disabled from a non-service-connected disability not resulting from the veteran's willful misconduct. "Service requirements" refers to the specified period of active-duty service which the veteran generally must have performed during a period of war in order for the veteran and the veteran's survivors to be eligible for pension. "Period of war" is defined in paragraph (11) of existing section 101 of title 38, United States Code, as the Spanish-American War, the Mexican border period, World War I, World War II, the Korean conflict, the Vietnam era, and the period beginning on the day of any future

declaration of war by the Congress and ending on the date prescribed by Presidential proclamation or concurrent resolution of the Congress. For the purposes of chapter 15, the dates of each period of war are as follows:

(1) Spanish-American War (including Philippine Insurrection and Boxer Rebellion): generally, April 21, 1898, to July 4, 1902; but, in the case of Moro Province hostilities, April 21, 1898, to July 15, 1903. (Sec. 101(6) of title 38)

(2) Mexican border period: May 9, 1916, to April 5, 1917, in the case of a veteran who during such period served in Mexico, on the borders thereof, or in the waters adjacent thereto. (Sec. 101(30))

(3) World War I: generally, April 6, 1917, to November 11, 1918; but April 6, 1917, to July 2, 1921, for a veteran who served on active duty after April 5, 1917, and before November 12, 1918. (Sec. 501)

(4) World War II: December 7, 1941, to December 31, 1946. (Sec. 101(8))

(5) Korean conflict: June 27, 1950, to January 31, 1955. (Sec. 101(9))

(6) Vietnam era: August 5, 1964, to May 7, 1975. (Sec. 101(29))

"Permanently and totally disabled" is defined, for purposes of chapter 15, in existing section 502 of title 38 to include a person who is 65 years of age or older, or who is suffering from (1) any disability which is sufficient to render it impossible for the average person to follow a substantially gainful occupation, if it is reasonably certain that the disability will continue throughout the person's life, or (2) any disease or disability determined by the Administrator to be of such a nature or extent as to justify a determination that persons suffering therefrom are permanently and totally disabled.

Subsection (b). Provides for the monthly payment of improved pension at the annual rate of $3,240, reduced by the amount of the veteran's annual countable income, to an eligible veteran who is not married—or who is married but not living with or reasonably contributing to the support of the spouse—and has no child to whose support the veteran is reasonably contributing.

In this analysis, "countable income" refers to the person's entire income, reduced by any applicable exclusions from such income provided for under the Committee bill or, with respect to countable income under the current pension program, existing provisions of title 38. These exclusions are described in the analysis of new section 564, *infra*.

Under existing section 521(b), an eligible veteran of World War I or a later period of war who is unmarried (or is married but not living with or reasonably contributing to the support of his or her spouse) and has no child, and whose annual countable income does not exceed $300, receives the maximum monthly pension benefit of $197. A veteran whose annual countable income is more than $300 but less than $3,770 receives a monthly benefit computed by the specified rate-decrement-income-limitation formula, but not less than $5.

Subsection (c). Provides for the monthly payment of improved pension at the annual rate of $4,284 to an eligible veteran who is mar-

ried and living with or reasonably contributing to the support of the veteran's spouse or who has a child to whose support the veteran is reasonably contributing. The annual rate of $4,284 is increased by $660 for each such family member in excess of one to whose support the veteran is reasonably contributing and is reduced by the amount of the veteran's annual countable income and the annual countable incomes of such family members.

Under existing section 521(c), an eligible veteran who is married and living with or reasonably contributing to the support of his or her spouse, or has a child or children, and whose annual countable income does not exceed $500, receives a maximum monthly benefit of $212 with one dependent, $217 with two dependents, and $222 with three or more dependents (no additional amounts being payable for additional dependents). A veteran whose annual countable income is more than $500 but less than $5,070 receives a monthly benefit computed by the specified rate-decrement-income-limitation formula, but not less than $5. Existing section 521(f)(1) provides that, in the case of a married veteran, all income of the spouse which is reasonably available to or for the veteran in excess of $1,200, or the total earned income of the spouse, shall be considered as the income of the veteran, unless in the Administrator's judgment to do so would work a hardship on the veteran. Under current law, the income of a veteran's child or children is never taken into account in determining the amount of pension payable to the veteran.

Subsection (d). Provides for higher improved pension rates for eligible veterans in need of regular aid and attendance, as follows:

Paragraph (1) of subsection (d). Provides for the monthly payment of improved pension at the annual rate of $5,340, reduced by the amount of the veteran's annual countable income, to an eligible veteran in need of regular aid and attendance who is not married—or who is married but not living with or reasonably contributing to the support of the spouse—and who has no child to whose support the veteran is reasonably contributing.

Paragraph (2) of subsection (d). Provides for the monthly payment of improved pension at the annual rate of $6,384 to an eligible veteran in need of regular aid and attendance who is married and living with or reasonably contributing to the support of the veteran's spouse or who has a child to whose support the veteran is reasonably contributing. The annual rate of $6,384 is increased by $660 for each such family member in excess of one to whose support the veteran is reasonably contributing and is reduced by the amount of the veteran's annual countable income and the annual countable income of such family members.

Under existing section 521(d)(1), a veteran entitled to pension under either subsection (b) or (c) of existing section 521 who is in need of regular aid and attendance receives an allowance of $165 per month in addition to his or her pension benefit. The aid and attendance allowance payable to such a veteran is not reduced by other income except that, if such veteran's annual countable income exceeds the applicable income limitation under existing section 521(d)(2) by not more than $500, he or she continues to receive the aid and attendance allowance of $165 per month, reduced by 16.6 percent for each $100 or

portion thereof by which the veteran's annual countable income exceeds the applicable income limitation.

Subsection (e). Provides for the monthly payment of improved pension at the annual rate of $4,016, reduced by the amount of the veteran's annual countable income, to a veteran eligible under subsection (b) of this section ("single" veteran with no dependent children) who either is permanently and totally disabled and has additional disabilities independently ratable at 60 percent or more, or is permanently housebound, but not to the extent of requiring regular aid and attendance. A veteran so disabled or housebound who is eligible under subsection (c) of this section (married or with one dependent child) would be entitled to improved pension payable monthly at the annual rate of $5,060, increased by $660 for each family member (as described in such subsection (c)) in excess of one and reduced by annual countable income as prescribed in such subsection (c). Under existing section 521(e), an add-on benefit of $61 per month is payable to "housebound" veterans receiving pension under that section. That amount is not reduced by other income.

Subsection (f). Provides for the monthly payment of improved pension at the combined annual rate of $4,284 in the case of two veterans married to one another where each meets the service and disability requirements of this section. If either veteran is in need of regular aid and attendance, the annual rate would be $6,384; and if both veterans are in need of regular aid and attendance, the annual rate would be $8,484. If either veteran would be entitled (if not married to a veteran) to the rate provided by new subsection (e) of this section (the "housebound" rate), the annual rate would be $5,060; and if both veterans would be entitled to such rate, the annual rate would be $5,836. If one veteran is in need of regular aid and attendance and the other would be entitled (if not married to a veteran) to the rate provided by new subsection (e) of this section (the "housebound" rate), the annual rate would be $7,160. In each of the foregoing cases, the annual rate is increased by $660 for each child to whose support either veteran is, or both veterans are, reasonably contributing; and the rate is reduced by the amount of each veteran's annual countable income and the annual countable income of such dependent child or children. There are no comparable provisions in current law.

Subsection (g). Provides that the amount of improved pension payable to any veteran under new subsection (b), (c), (d), (e), or (f) of this section would be increased by 25 percent if veterans of the period of war during which such veteran served were not eligible for VA educational benefits or home loan benefits similar to those provided for veterans of later periods of war under chapters 34 and 37, respectively, of title 38, United States Code, or under prior corresponding provisions of law. Thus, the 25-percent increase would be provided to all needy veterans of World War I and earlier periods of war. Under existing section 521(h), the rate of pension payable to any veteran receiving benefits under subsection (b), (c), (d), or (e) of section 521 is increased by 25 percent on the first day of the month in which the veteran attains age 78. That 25-percent add-on benefit is not reduced by other income, nor would the 25-percent add-on benefit provided for under this section be reduced by other income.

Subsection (h). Provides that a veteran meets the service requirements of this section if the veteran served in the active military, naval, or air service (1) for 90 days or more during a period of war; (2) during a period of war, and was discharged or released from such service for a service-connected disability; (3) for a period of not less than 90 consecutive days beginning or ending during a period of war; or (4) for an aggregate of 90 days or more in two or more separate periods of service during more than one period of war. These requirements are derived from those provided in existing section 521(g), except that section 521(g) refers throughout to periods of war by name.

Subsection (i). Provides for certain special situations under the improved pension program, as follows:

Paragraph (1) of subsection (i). Provides that the Administrator may combine ratings for service-connected disabilities with ratings for non-service-connected disabilities in determining whether a veteran is permanently and totally disabled. This provision is identical to existing section 523(a).

Paragraph (2) of subsection (i). Provides that in the case of a veteran who is eligible for improved pension and also for compensation for a service-connected disability, the Administrator shall pay only the greater benefit. This provision is similar to existing section 523(b).

Paragraph (3) of subsection (i). Clarifies that where a veteran is entitled to improved pension on the basis of the veteran's own service and would also be entitled to improved pension on the basis of any other person's service, the Administrator shall pay only the greater benefit. Existing section 3104(b)(1) expressly permits the receipt of duplicative benefits by a person on the basis of his or her own service and on the basis of the death or disability of another person.

Subsection (j). Provides that improved pension benefits may be paid less frequently than monthly when the amount of the annual benefit payable to a veteran would be less than 4 percent of the maximum annual rate payable under subsection (b) of this section. There is no comparable provision in current law. However, existing section 521 provides that in no case may the amount of pension payable to any veteran be less than $5 per month.

New section 562, entitled "Improved pension for surviving spouses of veterans of a period of war", consists of subsections (a) through (f), as follows:

Subsection (a). Provides for the payment of improved pension, at the rates prescribed in subsection (b), (c), or (d) of this section, to the surviving spouse of any veteran of a period of war who met the service requirements of new section 561 or who, at the time of death, was receiving or entitled to receive compensation or retirement pay for a service-connected disability. Under existing section 541(a), the surviving spouse of a veteran of World War I or a later period of war who met the service requirements of section 521 or who at the time of death was receiving (or entitled to receive) compensation or retirement pay for a service-connected disability may receive pension at specified rates.

Subsection (b). Provides for improved pension benefits for surviving spouses, as follows:

Paragraph (1) of subsection (b). Provides for the payment of improved pension at the annual rate of $2,172, reduced by the amount of

the surviving spouse's annual countable income, to a surviving spouse who does not have custody of a child of the veteran. Under existing section 541(b), if there is no child, a surviving spouse whose annual countable income is less than $300 may receive the maximum monthly pension of $133. A surviving spouse whose annual countable income is more than $300 but less than $3,770 receives a monthly benefit computed by the specified rate-decrement-income-limitation formula, but not less than $5.

Paragraph (2) of subsection (b). Provides for the payment of improved pension at the annual rate of $2,868 to a surviving spouse who has custody of a child of the veteran. The annual rate of $2,868 is increased by $660 for each additional child and is reduced by the amount of the surviving spouse's annual countable income and the annual countable income of such child or children. Under existing section 542(c), if there is a surviving spouse and one child, and the surviving spouse's annual countable income is less than $700, the maximum monthly rate is $159. A surviving spouse whose annual countable income is more than $700 but less than $5,770 receives a benefit computed by the specified rate-decrement-income-limitation formula, but not less than $5. Under existing section 542(c)(2), whenever the monthly benefit payable to a surviving spouse would be less than the amount which would be payable for one child under section 542(c)(1) ($61 per month), the surviving spouse is paid at the child's rate. Also, under current law, if there is more than one child, the spouse's rate is increased by $26 for each additional child, and that amount is not reduced by the surviving spouse's other income.

Subsection (c). Provides for higher improved pension rates for certain surviving spouses.

Under current law, no increase in basic pension rates is provided to a surviving spouse as a result of being permanently and totally disabled or age 65 or over as a result of the fact that any child in the surviving spouse's custody is a small or helpless child.

Subparagraph (A) of paragraph (1) of subsection (c). Provides for the payment of improved pension at the annual rate of $3,240, reduced by the amount of the surviving spouse's annual countable income, to a surviving spouse who is permanently and totally disabled and does not have custody of a child of the veteran. (The definition of "permanently and totally disabled" is discussed in the analysis of subsection (a) of this section, *supra*, and includes having reached the age of 65.)

Subparagraph (B) of paragraph (1) of subsection (c). Provides for the payment of improved pension at the annual rate of $4,284 to a surviving spouse who is permanently and totally disabled and who has custody of a child of the veteran. The annual rate of $4,284 is increased by $660 for each additional child and is reduced by the amount of the surviving spouse's annual countable income and the annual countable income of the child or children.

Paragraph (2) of subsection (c). Provides for the payment of improved pension at the annual rate of $4,284 to a surviving spouse who has custody of a child age 6 or under or who provides more than one-

half of the support of a child who resides with the surviving spouse and became permanently incapable of self-support before reaching the age of 18. The annual rate of $4,284 is increased by $600 for each additional child and is reduced by the amount of the surviving spouse's annual countable income and the annual countable income of the child or children.

Under existing section 544, a surviving spouse in need of regular aid and attendance receives a monthly allowance of $79 in addition to his or her pension benefit. That amount is not reduced by other income.

Subsection (d). Provides for higher improved pension rates for disabled surviving spouses in need of regular aid and attendance, as follows:

Paragraph (1) of subsection (d). Provides for the payment of improved pension at the annual rate of $5,340, reduced by the amount of the surviving spouse's annual countable income, to a surviving spouse who is entitled under paragraph (1)(A) of subsection (c) of this section (permanently and totally disabled and not having custody of a child of the veteran) and who is in need of regular aid and attendance.

Paragraph (2) of subsection (d). Provides for the payment of improved pension at the annual rate of $6,384 to a surviving spouse who is in need of regular aid and attendance and who is entitled under paragraph (1)(B) of subsection (c) of this section (permanently and totally disabled and having custody of a child of the veteran). The annual rate of $6,384 is increased by $660 for each additional child and is reduced by the amount of the surviving spouse's annual countable income and the annual countable income of the child or children.

Under existing section 544, a surviving spouse in need of regular aid and attendance receives a monthly allowance of $79 in addition to his or her pension benefit. That amount is not reduced by other income.

Subsection (e). Provides that a surviving spouse, in order to be eligible for improved pension, must have been married to the veteran (1) before March 4, 1917, if the veteran served in an Indian War; before January 1, 1938, if the veteran served in the Spanish-American War; before December 14, 1944, if the veteran served during the Mexican border period or World War I; before January 1, 1957, if the veteran served in World War II; before February 1, 1965, if the veteran served during the Korean conflict; or before May 8, 1985, if the veteran served during the Vietnam era; (2) for 1 year or more; or (3) for any period of time if a child was born of the marriage or to them before marriage. These requirements are the same as those in existing section 542(e).

Subsection (f). Provides that improved pension benefits may be paid to a surviving spouse less frequently than monthly if the amount of the annual benefit is less than 4 percent of the amount specified in this section. There is no comparable provision in current law. However, existing section 541 provides that, in no case may the amount of pension payable to any surviving spouse entitled to pension under existing subsection (b) of that section be less than $5 per month, and

to any surviving spouse entitled to pension under subsection (c) (surviving spouse with one dependent) less than the rate payable to a surviving child under existing section 542 ($61 per month).

New section 563, entitled "Improved pension for surviving children of veterans of a period of war", consists of subsections (a) and (b), as follows:

Subsection (a). Provides for the monthly payment of improved pension to each eligible surviving child of a veteran of a period of war who met the service requirements of new section 561 or who at the time of death was receiving, or entitled to receive, compensation or retirement pay for a service-connected disability (1) at the annual rate of $660, payable monthly and reduced by the amount of such child's annual countable income or (2), if the child is residing with any person who is legally responsible for the child's support under the laws of the State in which the child resides, at an annual rate equal to the amount by which the appropriate annual rate provided under new section 562, exceeds the annual countable income of the child and such person or persons, but not to exceed the amount by which $660 exceeds the annual countable income of such child. The appropriate annual rate would be determined in accordance with regulations prescribed under this section by the Administrator and the provisions of new section 564. A surviving child would be eligible for improved pension if there is so surviving spouse, the surviving spouse is not eligible for improved pension, or the child is not in the custody of the surviving spouse. Under existing section 542, the surviving children of veterans of World War I or later periods of war are eligible for pension at the rates provided in that section when there is no surviving spouse entitled to pension. That section 542 provides for a monthly rate of $61 for one child, with $26 added for each additional child, the whole to be divided in equal shares. No reduction is made in those amounts for other income, but no pension is payable if the child's annual countable income (excluding all earned income) exceeds $3,080.

Subsection (b). Provides that benefits to surviving children may be paid less frequently than monthly if the annual benefit amount is less than 4 percent of the amount specified in new section 561(b). There is no comparable provision in existing law applicable to surviving children.

New section 564, entitled "Determinations with respect to annual countable income; income exclusions", consists of subsections (a) through (f), as follows:

Subsection (a). Requires that, in determining annual countable income, all payments of any kind and from any source, including salary, retirement, and annuity payments (including income which has been waived, regardless of whether the waiver was pursuant to a statute, a contract, or otherwise, but not including improved pension benefits under this subchapter) be included, with the exception of the exclusions set forth in clauses (1) through (10) of subsection (a). The requirement that all income not specifically excluded be counted is the same as in existing section 503. That section also provides for 18 exclusions from annual countable income. Those which are not continued in any form in the Committee bill, are as follows:

(1) Payments of the 6-months' death gratuity (6-months' active-duty base pay, payable for deaths of service personnel while on active duty). (Sec. 503(a)(1))

(2) Payments under chapters 15 (pension), 11 (compensation), and 13 (DIC), except section 412(a). (Sec. 503(a)(3))

(3) Lump-sum death payments under subchapter II of chapter 7 of title 42 (social security burial benefits). (Sec. 503(a)(5))

(4) Ten percent of the amount of payments to an individual under public or private retirement, annuity, endowment, or similar plans or programs. (Sec. 503(a)(6))

(5) Payments received for discharge of jury duty or obligatory civic duties. (Sec. 503(a)(11))

(6) Payments of State bonuses or similar cash gratuities by any State, based on service in the Armed Forces. (Sec. 503(a)(13))

(7) Amounts equal to prepayments on an indebtedness secured by a mortgage or similar debt instrument on real property which was, prior to a veteran's or a veteran's spouse's death, such veteran's and spouse's principal residence, excludable during the year of the veteran's or spouse's death and the succeeding year, if the indebtedness had been incurred prior to such death. (Sec. 503(a)(14))

(8) Payments received by a retired employee from such employee's former employer as reimbursement for monthly premiums for supplementary medical insurance benefits for the aged provided in part B of title XVIII of the Social Security Acts. (Sec. 503(a)(16))

(9) Payments of Retired Serviceman's Family Protection Plan annuities elected under subchapter I of chapter 73 of title 10. (Sec. 503(a)(17))

The exclusions contained in the Committee bill, are, as follows:

(1) Donations from public or private relief or welfare organizations. This exclusion is the same as that provided in existing sections 503(a)(2).

(2) Amounts equal to the amounts paid by the veteran's spouse for the expenses of the last illness of the veteran, and by a surviving spouse or surviving child of a deceased veteran for the veteran's just debts, the expenses of the veteran's last illness, and the expenses of the veteran's burial, other than burial expenses reimbursed under chapter 23 of title 38, United States Code. This exclusion is the same as that provided in existing section 503(a)(7).

(3) Amounts equal to the amounts paid by a veteran for the last illness and burial of the veteran's spouse or child, or by a surviving spouse for the last illness and burial of the veteran's child. This exclusion is the same as that provided in existing section 503(a)(9).

(4) Proceeds of fire insurance policies. This exclusion is the same as that provided in existing section 503(a)(8).

(5) Profit realized from the disposition of real or personal property other than in the course of a business. This exclusion is the same as that provided in existing section 503(a)(10).

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(6) Amounts in join accounts in banks and similar institutions acquired by reason of the death of the other joint owner. This exclusion is the same as that provided in existing section 503(a)(15).

(7)(A) $780, plus one-half of the amount exceeding $780, of (i) the current-work income of the veteran and of the veteran's spouse and children, if any, for whom the veteran is receiving increased improved pension under subsection (c), (d), or (e) of new section 561; (ii) the current-work income of the surviving spouse and of the surviving spouse's children, if any, for whom the surviving spouse is receiving increased improved pension under subsection (b), (c), or (d) of new section 562; or (iii) the current-work income of a surviving child, including the current-work income of any person or persons with whom such child is residing who is legally responsible for such child's support under the laws of the State in which the child resides.

(B) In the case of a veteran or surviving spouse in need of regular aid and attendance, $1,560, plus one-half of the amount exceeding $1,560, of (i) the current-work income of the veteran and of the veteran's spouse and children, if any, for whom the veteran is receiving improved pension under subsection (c), (d), or (e) of new section 561; or (ii) the current-work income of the surviving spouse and of the surviving spouse's children, if any, for whom the surviving spouse is receiving increased improved pension under subsection (d) of new section 562.

(C) Any current-work income of any child, including a surviving child, up to the amount ($2,950) which would require the child to file a Federal income tax return under section 6012(a)(1)(A)(i) of the Internal Revenue Code of 1954 (26 U.S.C. 6012(a)(1)(A)(i)),[1] and, cumulatively, any current-work income of any child, including a surviving child, who is pursuing a post-secondary course of education or vocational rehabilitation or training, to the extent of amounts paid by such child for such course of education or vocational rehabilitation or training, including amounts paid for tuition, fees, books, or materials.

(8) Amounts equal to amounts paid in the previous calendar year by the veteran, the veteran's spouse or the surviving spouse, or by or on behalf of the surviving child or children for unreimbursed medical expenses (A) which exceed the lesser of (i) $100 or (ii) 5 percent of the annual income of the veteran, the surviving spouse, or the surviving child or children (including the income of any person or persons with whom such child is re-

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[1] The applicable portion of section 6012 of the Internal Revenue Code of 1954, is as follows:

§ 6012. Persons required to make returns of income.

(a) General rule.

Returns with respect to income taxes under subtitle A shall be made by the following:

(1)(A) Every individual having for the taxable year a gross income of $750 or more, except that a return shall not be required of an individual (other than an individual described in subparagraph (C))—

(i) who is not married (determined by applying section 413), is not a surviving spouse (as defined in section 2(a)), and for the taxable year has a gross income of less than $2,950.

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siding who is legally responsible for such child's support under the laws of the State in which the child resides), (B) subject to the Administrator's determination that the expenses were reasonably necessary for the health needs of the veteran or the veteran's spouse or children for whom the veteran receives increased improved pension, the surviving spouse, the surviving spouse's children for whom the surviving spouse receives increased improved pension, or the surviving child or children. In certain cases, the Administrator is to disallow an exclusion if the Administrator has determined that adequate health-care services of the same kind for which an exclusion had been granted in a previous year were readily available at a VA-operated facility and has given notice of that determination. The disallowance would be limited to expenses incurred more than 30 days after such notification; and the Administrator must further determine, before disallowing the exclusion, that the services continued to be readily available in a VA-operated facility during the period in which the expenses were incurred. Under existing section 503(c), the Administrator is authorized to provide by regulation for the exclusion from annual countable income of amounts paid by a veteran, surviving spouse, or surviving child for unusual medical expenses. By regulation (38 C.F.R. 3.262(1)), amounts equal to unreimbursed amounts paid by any such person for his or her own medical expenses and those of certain close relatives are excluded from annual countable income to the extent that they are in excess of 5 percent of total nonpension income.

(9) In the case of a veteran or surviving spouse in need of regular aid and attendance, amounts equal to amounts paid in the previous calendar year for unreimbursed expenses incurred for travel to and from such person's place of employment, to the extent that such amounts exceed the reasonable expenses which would have been incurred by a nondisabled person using an appropriate means of transportation (public transportation, if reasonably available) for such travel. There is no comparable provision in current law.

(10) In the case of a veteran, surviving spouse, or surviving child aged 18 to 23, pursuing a course of education or vocational rehabilitation or training, amounts equal to amounts paid in the previous calendar year by such person for such course of education, or vocational rehabilitation or training, including amounts paid for tuition, fees, books, and materials, and, in the case of a veteran or surviving spouse in need of regular aid and attendance, amounts paid for unusual, related transportation expenses (determined in the same manner as in clause (9) of this subsection). There is no comparable provision in existing law. However, existing section 503(a)(12) provides for the exclusion of VA education and training allowances paid to the dependents and survivors of certain veterans and service personnel.

Under current law there are no comparable provisions. However, existing section 521(f)(1) provides that, in the case of a married veteran, all income of the spouse which is reasonably

available to or for the veteran in excess of $1,200, or the total earned income of the spouse, whichever is the greater, shall be considered as the income of the veteran, unless in the judgment of the Administrator to do so would work a hardship upon the veteran. Also, existing section 542 provides that a surviving child's earned income shall be entirely excluded in determining whether the child's income exceeds the annual countable income limitation of $3,080.

Subsection (b). Provides that, before applying any current-work income exclusions under subsection (a)(7) of this section, the Administrator shall apply, first to non-current-work income and next to current-work income, the other exclusions provided for under subsection (a) of this section and that the current-work income exclusions shall apply to all current-work income not otherwise excluded. This clarifies the Committee's intention that the value of current-work income exclusions not be diminished by the operation of the other exclusions. Thus, for example, in the case of a veteran who has no spouse or child, who has nonpension income for a particular year consisting solely of $2,000 of current-work income, and who is entitled to an exclusion of $500 for unusual medical expenses, such veteran would first be entitled to the exclusion of $500 for unusual medical expenses and then to the exclusion of $780 (*not* $280), plus one-half of the remaining $720 of current-work income, or $360. Thus, the veteran's total exclusions would be $1,640 and total annual countable income would be $360. If such a veteran's total nonpension income consisted of current-work income of $2,000 and other annual countable income of $400, the $500 exclusion for unusual medical expenses would first be applied to exclude the $400 of noncurrent-work income and then to reduce countable current-work income to $1,900; next, the current-work income exclusion would be applied to the remaining $1,900 thereof, to produce annual countable income of $610 ($1,900 minus $780=$1,220; and $1,220 minus $610=$610. This subsection also provides that, before applying any other income exclusions to the income of any dependent or surviving child, the Administrator shall first apply the cumulative exclusions applicable to such a child to the child's current-work income. Thus, for a veteran's child attending college, for example, who has annual current-work income of $5,250, and who pays his or her own educational expenses of $1,800, the first amounts excludable would be $2,950 and $1,800, equaling $4,750; and the remainder, $500, would be excludable under the current-work income exclusion provided for under new subsection (a)(7)(A).

Subsection (c). Provides that a veteran shall be considered as living with a spouse, even though they reside in different places, unless they are estranged. This provision is the same as existing section 521(f)(2).

Subsection (d). Provides that, in determining annual countable income, where a fraction of a dollar is involved, annual countable income shall be considered to be the next lower dollar amount. This provision is the same as existing section 503(b).

Subsection (e). Defines the term "current-work income", as used in this section, as any any income which is earned income within the

meaning of section 401(c)(2)(A) and section 911(b) of the Internal Revenue Code of 1954 (26 U.S.C. 401(c)(2)(A) and 911(b)).[1]

New section 565, entitled "Net worth limitation", consists of subsections (a) through (c), as follows:

Subsection (a). Requires the denial or discontinuance of improved pension payments to a veteran when the corpus of the estate (net worth) or estates of the veteran and of the veteran's spouse (if any), and child (if any) for whom the veteran is receiving increased improved pension is such that under all the circumstances, including consideration of the veteran's income, it is reasonable that some part of the corpus be used for the veteran's support, except that amounts reasonably set aside for a child's educational or other similarly worthwhile vocational purposes shall be excluded from the determination of a child's estate. Under existing section 522, the denial or discontinuance of pension to a veteran is required if, under all the circumstances, including consideration of the veteran's income, it is reasonable that some part of the corpus of the veteran's estate be consumed for the veteran's maintenance. Current law does not provide for the inclusion of the veteran's spouse's or child's estate in the net worth determination.

Subsection (b). Requires the denial or discontinuance of improved pension payments to a surviving spouse whose estate (net worth) and whose child's estate, if the surviving spouse is receiving increased improved pension for such child, are such that under all the circumstances, including consideration of the surviving spouse's income, it is reasonable that some part of the corpus be used for the surviving spouse's support, except that amounts reasonably set aside for a child's educational or other similarly worthwhile vocational purposes shall be excluded from the determination of a child's estate. Under existing

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[1] Sections 401(c)(2)(A) and 911(b) of the Internal Revenue Code of 1954, are as follows:

§ 401(c). Definitions and rules relating to self-employed individuals and owner-employees.
For purposes of this section—

* * * * * * *

(2) Earned income.
(A) In general.
The term "earned income" means that net earnings from self-employment (as defined in section 1402(a)), but such net earnings shall be determined—
(i) only with respect to a trade or business in which personal services of the taxpayer are a material income-producing factor,
(ii) without regard to paragraphs (4) and (5) of section 1402(c),
(iii) in the case of any individual who is treated as an employee under section 3121(d)(3) (A), (C), or (D), without regard to paragraph (2) of section 1402(c), and
(iv) without regard to items which are not included in gross income for purposes of this chapter, and the deductions properly allocable to or chargeable against such items.
For purposes of this subparagraph, section 1402, as in effect for a taxable year ending on December 31, 1962, shall be treated as having been in effect for all taxable years ending before such date.

* * * * * * *

§ 911(b). Definition of earned income.
For purposes of this section, the term "earned income" means wages, salaries, or professional fees, and other amounts received as compensation for personal services actually rendered, but does not include that part of the compensation derived by the taxpayer for personal services rendered by him to a corporation which represents a distribution of earnings or profits rather than a reasonable allowance as compensation for the personal services actually rendered. In the case of a taxpayer engaged in a trade or business in which both personal services and capital are material income-producing factors, under regulations prescribed by the Secretary, a reasonable allowance as compensation for the personal services rendered by the taxpayer, not in excess of 30 percent of his share of the net profits of such trade or business, shall be considered as earned income.

section 543, the denial or discontinuance of pension to a surviving spouse is required if, under all the circumstances, including consideration of income, it is reasonable that some part of the corpus of the estate be consumed for the surviving spouse's maintenance. That section does not provide for the inclusion of a child's estate in the net worth determination with respect to a surviving spouse.

Subsection (c). Requires the denial or discontinuance of improved pension payments to a surviving child if such child's estate (net worth) is such that under all the circumstances, including consideration of the child's income and the income of any person with whom the child is living who is legally responsible for the child's support under the laws of the State in which the child resides and the estate or estates (net worth) of such person or persons, it is reasonable that some part of the corpus be used for the child's support, except that amounts reasonably set aside for the child's educational or similarly worthwhile vocational purposes shall be excluded from the determination of the child's estate. Under existing section 543, the denial or discontinuance of pension to a surviving child is required if, under all the circumstances, including the consideration of income, it is reasonable that some part of the corpus of the estate be consumed for his or her maintenance.

New section 566, entitled "Election of improved pension benefits", provides that a veteran receiving pension under section 521 of title 38, a surviving spouse receiving pension under section 541, a surviving child receiving pension under section 542, and veterans, surviving spouses, and surviving children receiving pension under section 9(b) of the Veterans' Pension Act of 1959 ("old law") may elect to receive improved pension under the new subchapter IV instead of such other pension. If at any time improved pension is paid pursuant to such an election, the election would be irrevocable.

New section 567, entitled "Definitions", consists of clauses (1) and (2), as follows:

Clause (1). Provides that the term "child" as used in new subchapter IV means the veteran's child. There is no comparable provision in current law. Existing section 101(4) provides for the definition of the term "child" but does not specifically provide that "child", for purposes of title 38, means the veteran's child.

Clause (2). Provides that for purposes of the eligibility of a surviving spouse and surviving children for improved pension under new sections 562 and 563, the expanded definition of the term "veteran" shall include a person who has completed at least 2 years of honorable active military, naval, or air service, as certified by the Secretary of the appropriate department, but whose death in such service was not in the line of duty. This provision is the same as existing section 542(f).

Subsection (b) of section 101 amends the table of sections at the beginning of chapter 15 of title 38 to reflect the insertion of the new subchapter IV and the redesignation of existing subchapter IV as subchapter V by the amendments made in subsection (a) of section 101.

Subsection (c) of section 101 amends subsection (a) of section 503 of title 38, relating to determinations with respect to annual countable income, to make the provisions for determining annual countable income in section 503 applicable only to the incomes of persons entitled to receive pension under existing subchapters II and II of chapter 15.

Subsection (d) of section 101 amends section 504 of title 38, relating to persons heretofore having a pensionable status, to allow improved pension benefits under new subchapter IV to be granted to such persons regardless of whether the service requirements of the new subchapter are met. This provision is based on existing section 504, under which such persons were made eligible for pension under the current program.

Clause (1) of subsection (e) of section 101 redesignates as subsection (c) existing subsection (b) of section 506 of title 38, United States Code, relating to resource reports and overpayment adjustments.

Clause (2) of subsection (e) of section 101 amends section 506 of title 38, United States Code, to add a new subsection (b), as follows:

New subsection (b) of section 506 of title 38, relating to resource reports and overpayment adjustments, provides for resource reports as a condition of granting or continuing improved pension, as follows:

Clause (1) of new subsection (b). Authorizes the Administrator of Veterans' Affairs to require appropriate information, proof, or evidence from any person applying for or receiving improved pension under new section 561, 562, or 563, as added by the amendments made in section 101(a)(2), in order to determine such person's income and net worth, the income and net worth of a spouse or child for whom the person receives or is to receive increased improved pension, and in the case of a surviving child, the income and net worth of any person with whom the child resides who is legally responsible for the support of such child under the laws of the State in which the child resides.

Clause (2) of new subsection (b). Requires that any such applicant for or recipient of improved pension must file each year with the Veterans' Administration, on a form prescribed by the Administrator, a report showing (1) the applicant's or recipient's income during the previous year, including the income of any spouse or child for whom such applicant or recipient is receiving or is to receive increased improved pension, and in the case of a surviving child, the income and net worth of any person with whom the child resides who is legally responsible for the support of such child under the laws of the State in which the child resides; (2) the applicant's or recipient's estimated income for the year in which the report is filed, including the estimated income of any such spouse or child, and in the case of a surviving child, the income and net worth of any person with whom the child resides who is legally responsible for the support of such child under the laws of the State in which the child resides; and (3) any expected increases in the applicant's or recipient's net worth and in the net worth of any such spouse or child, and in the case of a surviving child, in the income and net worth of any person with whom the child resides who is legally responsible for the support of such child under the laws of the State in which the child resides. An exemption from this annual reporting requirement is provided, under regulations to be prescribed by the Administrator, for any person in a category of persons whose sole income is regularly received and derived from a Federal program.

Clause (3) of new subsection (b). Requires that any such applicant for or recipient of improved pension must promptly file a revised

report whenever there is a material change in such person's income or net worth, whenever there is a material change in the income or net worth of a spouse or child for whom such person is receiving or is to receive increased improved pension, or in the case of a surviving child, the income and net worth of any person with whom the child resides who is legally responsible for the support of such child under the laws of the State in which the child resides.

Clause (4) of new subsection (b). Requires that any such applicant or recipient promptly notify the Administrator of any change in the dependency status of any such spouse or child.

The resource reporting requirements set forth in this subsection are essentially the same as those prescribed in existing section 506, except that, under current law, veterans are not required to report the incomes and net worths of their spouses; veterans and surviving spouses are not required to report the incomes and net worths of their children; surviving children are not required to report their incomes and net worths annually, nor are persons aged 72 or over who have been receiving pension under existing section 521, 541, or 542 for 2 years or more; and prompt notification of any changes in the dependency status of spouses and children is not required.

Clause (3) of subsection (e) of section 101 amends subsection (c) of section 506, title 38, United States Code, as redesignated by clause (1) of subsection (e), by adding new sections 561, 562, and 563 to the sections under which the Administrator is authorized to recoup overpayments (unless waived) of pension by a deduction from any future pension payments to the person concerned.

Subsection (f) of section 101 amends section 507 of title 38, United States Code, relating to the payment of pension to the spouse or children of a veteran receiving pension under subchapter II of chapter 15 who disappears, to provide for the payment of improved pension to the spouse or children of a veteran receiving improved pension under new subchapter IV who disappears.

Subsection (g) of section 101 amends paragraph (3) of subsection (a) of section 512, relating to the payment of pension to Spanish-American War veterans, in order to eliminate the option given a Spanish-American War veteran, under clause (A) of that paragraph, to elect to receive pension under existing section 521, and to allow such veteran to elect to receive, in lieu of pension under existing section 512 or 521, improved pension at the rates prescribed by new section 561 and under the conditions (other than the service requirements) applicable to pension paid under that section to veterans of a period of war. If at any time improved pension is paid pursuant to such an election, the election would be irrevocable. This subsection of the bill also makes certain clarifying amendments in subparagraph (B) of that paragraph.

Subsection (h) of section 101 amends section 521 of title 38, relating to veterans of the Mexican border period, World War I, World War II, the Korean conflict, and the Vietnam era, to add a new subsection (i), as follows:

New subsection (i) of section 521. Provides that no such veteran who applies for pension under that section on or after the effective date of the improved pension program under new section 561 may be paid

pension under existing section 521 (except as provided in new section 508(b) of title 38, as added by section 305 of the bill, relating to persons residing outside the 50 States and the District of Columbia), but that, if the application is pending on such effective date, the veteran may elect to receive pension under existing section 521 in lieu of improved pension under new section 561.

Subsection (i) of section 101 amends section 532, relating to surviving spouses of Civil War veterans, to add a new subsection (e), as follows:

New subsection (e) of section 532. Allows such a surviving spouse to elect to receive, in lieu of pension under existing section 532 or 541, improved pension at the rates prescribed by new section 562 and under the conditions (other than the service requirements) applicable to pension paid to surviving spouses of wartime veterans; and provides that if at any time improved pension is paid pursuant to such an election, the election would be irrevocable.

Subsection (j) of section 101 amends section 533, relating to children of Civil War veterans, to add a new subsection (b), as follows:

New subsection (b) of section 533. Allows such a child to elect to receive, in lieu of pension under existing section 533 or 542, improved pension at the rates prescribed by new section 563 and under the conditions (other than the service requirements) applicable to pension paid to children of wartime veterans; and provides that, if at any time improved pension is paid pursuant to such an election, the election would be irrevocable.

Subsection (k) of section 101 amends section 534, relating to surviving spouses of Indian War veterans, to add a new subsection (d), as follows:

New subsection (d) of section 534. Allows such a surviving spouse to elect to receive, in lieu of pension under existing section 534 or 541, improved pension at the rates prescribed by new section 562 and under the conditions (other than the service requirements) applicable to pension paid to surviving spouses of wartime veterans; and provides that, if at any time improved pension is paid pursuant to such an election, the election would be irrevocable.

Subsection (l) of section 101 amends section 535, relating to children of Indian War veterans, to add a new subsection (b), as follows:

New subsection (b) of section 535. Allows such a child to elect to receive improved pension, in lieu of pension under existing section 535 or 542, at the rates prescribed by new section 563 and under the conditions (other than the service requirements) applicable to children of wartime veterans; and provides that, if at any time improved pension is paid pursuant to such an election, the election would be irrevocable.

Subsection (m) of section 101 amends paragraph (1) of subsection (d) of section 536, relating to surviving spouses of Spanish-American War veterans, to allow such a surviving spouse to elect to receive improved pension, in lieu of pension under existing section 536 or 541, at the rates prescribed by new section 562 and under the conditions applicable to surviving spouses of wartime veterans; and to provide that, if at any time improved pension is paid pursuant to such an election, the election would be irrevocable.

Subsection (n) of section 101 amends section 537, relating to children of Spanish-American War veterans, to add a new subsection (b), as follows:

New subsection (b) of section 537. Allows such a child to elect to receive improved pension, in lieu of pension under section 537 or 542, at the rates prescribed by new section 563 and under the conditions applicable to children of wartime veterans; and provides that, if at any time improved pension is paid pursuant to such an election, the election would be irrevocable.

Subsection (o) of section 101 amends section 541, relating to surviving spouses of veterans of the Mexican border period, World War I, World War II, the Korean conflict, or the Vietnam era, to add a new subsection (g), as follows:

New subsection (g) of section 541. Provides that no such surviving spouse who applies for pension on or after the effective date of the improved pension program may receive pension under existing section 541 (except as provided under new section 508(b) of title 38, as added by section 305 of the bill, relating to persons residing outside the 50 States and the District of Columbia), but that, if the application is pending on such effective date, the surviving spouse may elect to receive pension under existing section 541 in lieu of improved pension under new section 562.

Subsection (p) of section 101 amends section 542, relating to surviving children of veterans of the Mexican border period, World War I, World War II, the Korean conflict, or the Vietnam era, to add a new subsection (d), as follows:

New subsection (d) of section 562. Provides that no such child who applies for pension on or after the effective date of the improved pension program may receive pension under existing section 542 (except as provided under new section 508(b) of title 38, relating to persons residing outside the 50 States and the District of Columbia, as so added), but that, if the application is pending on such effective date, such surviving child may elect to receive pension under existing section 542 in lieu of improved pension under new section 563.

Subsection (q) of section 101 amends sections 571, 572, and 573, as redesignated by section 101(a)(1) of the bill, relating to the Army, Navy, Air Force, and Coast Guard Medal of Honor Roll, to amend section numbers referred to within those sections to conform with the redesignated section numbers.

TITLE II—IMPROVED DEPENDENCY AND INDEMNITY COMPENSATION FOR SURVIVING PARENTS

Section 201

Clause (1) of subsection (a) of section 201 amends section 401 of title 38, United States Code, relating to definitions for purposes of chapter 13 of such title, entitled "Dependency and Indemnity Compensation for Service-Connected Deaths", to insert at the end of section 401 a new paragraph (2), as follows:

New paragraph (2) of section 401. Provides that the term "dependency and indemnity compensation" as used in existing section 410, relating to deaths entitling survivors to dependency and indemnity

compensation, section 417 (as redesignated by clause (2) of this section, relating to dependency and indemnity compensation in cases of prior deaths, and section 418 (as redesignated by clause (2) of this section, relating to restrictions on payments under chapter 13 of title 38, shall include improved dependency and indemnity compensation for surviving parents as provided for in new section 416, as added by amendments made in subsection (a)(4) of this section 201. Dependency and indemnity compensation is payable to the surviving parent or parents of a veteran who died from service-connected causes. The term "parent" is defined in paragraph (5) of section 101, as "a father, a mother, a father through adoption, a mother through adoption, or an individual who for a period of not less than 1 year stood in the relationship of a parent to a veteran at any time before the veteran's entry into active military, naval, or air service or if two persons stood in the relationship of a father or a mother for 1 year or more, the person who last stood in the relationship of father or mother before the veteran's last entry into active military, naval, or air service".

Clause (2) of subsection (a) of section 201 redesignates existing sections 416 and 417 of title 38 as sections 417 and 418, respectively.

Clause (3) of subsection (a) of section 201 amends section 415, entitled "Dependency and indemnity compensation to parents", to add a new subsection (i), as follows:

New subsection (i) consists of paragraphs (1) through (4), as follows:

Paragraph (1) of new subsection (i) of section 415. Provides that a parent who applies for and becomes entitled to dependency and indemnity compensation on or after the effective date of the improved dependency and indemnity compensation program under new section 416, as added by section 201(a)(4) of the bill, may not be paid dependency and indemnity compensation under existing provisions of chapter 13, except as provided in new subsection (i)(4) of section 415.

Paragraph (2) of new subsection (i). Provides that a parent who applies for dependency and indemnity compensation prior to such effective date may be paid benefits under existing section 415, if the parent elects to receive dependency and indemnity compensation under such section in lieu of improved dependency and indemnity compensation under new section 416, as added by section 201(a)(4) of the b

Paragraph (3) of new subsection (i). Allows any parent who residing in the 50 States or the District of Columbia and is receivi dependency and indemnity compensation under existing section 4 or death compensation under subchapter III or IV of chapter 11 o title 38, to elect at any time to receive improved dependency and indemnity compensation; and provides that if at any time improved dependency and indemnity compensation is paid pursuant to such an election, the election would be irrevocable.

Paragraph (4) of new subsection (i). Provides that a parent who is residing outside the 50 States and the District of Columbia on the effective date of new section 416 may apply for and receive benefits under existing section 415 as long as such parent continuously resides outside the 50 States and the District of Columbia after such date.

Clause (4) of subsection (a) of section 201 amends chapter 13 of title 38, relating to dependency and indemnity compensation for

service-connected deaths, by inserting after section 415 a new section 416, entitled "Improved dependency and indemnity compensation to parents", as follows:

New section 416 consists of subsections (a) through (n), as follows:

Subsection (a). Provides for the payment of improved dependency and indemnity compensation to the needy parent or parents of a deceased veteran if, during the 1-year period immediately preceding such veteran's death, the veteran contributed one-half or more to the support of such parent or parents. Under existing sections 410 and 415, the needy surviving parent or parents of a veteran who died from service-connected disability after December 31, 1956, are paid dependency and indemnity compensation benefits, with no requirements of such parents' dependence on the veteran for support prior to the veteran's death.

Subsection (b). Provides for the monthly payment of improved dependency and indemnity compensation at the annual rate of $3,240 to one parent, or to each parent if there are two parents living apart, if such parent is not in need of regular aid and attendance, reduced by the amount of the parent's annual countable income and, if a remarried parent is living with such parent's spouse, so much of the income of such spouse as is reasonably available to or for such parent. "Countable income" refers to the person's entire income, reduced by any applicable exclusions from such income. Those exclusions are described in the analysis of subsection (h)(1) of this section, *infra*.

Under existing section 415(b), if there is only one parent of a veteran who died from service-connected disability, such a parent whose annual countable income does not exceed $800 receives the maximum monthly parent's dependency and indemnity compensation benefit of $152. Any such parent whose annual countable income is more than $800 but less than $3,770 receives a monthly benefit computed by the specified rate-decrement-income-limitation formula, but not less than $5.

Under existing section 415(c), if there are two parents who are not living together, each such parent whose annual countable income does not exceed $800 receives the applicable maximum monthly parents' dependency and indemnity compensation benefit of $107. Any such parent whose annual countable income is more than $800 but less than $3,770 receives a monthly benefit computed by the specified rate-decrement-income limitation but not less than $5.

Under existing section 415(d)(1), if there are two parents who are living together, or if a parent has remarried and is living with such parent's spouse, each such parent whose annual countable income does not exceed $1,000 receives the maximum monthly parents' dependency and indemnity compensation benefit of $102. Any such parent whose annual countable income, together with the income of such parent's spouse, is more than $1,000 but less than $5,070 receives a monthly benefit computed by the specified rate-decrement-income-limitation but not less than $5.

Existing section 415(b), described *supra*, further provides that a remarried parent who is living with such parent's spouse may receive the amount payable under section 415(b)(1) or the amount payable under section 415(d)(1), whichever is the greater, and that in such

cases the total income of the parent and the parent's spouse shall be counted in determining the appropriate rate.

Subsection (c). Provides for the monthly payment of improved dependency and indemnity compensation at the annual rate of $4,284 to two parents who are living together neither of whom is in need of regular aid and attendance, reduced by the amount of the parents' annual countable income. The payment of benefits under current law applicable to such parents, existing section 415(d)(1), is discussed in the analysis of subsection (b) of this new section, *supra.*

Subsection (d). Provides for higher improved dependency and indemnity compensation rates to parents in need of regular aid and attendance, as follows:

Paragraph (1) of subsection (d). Provides for the monthly payment of improved dependency and indemnity compensation at the annual rate of $5,340 to a single parent (or a parent living apart from the other parent) who is in need of regular aid and attendance, reduced by the amount of such parent's annual countable income and the annual countable income of a remarried parent's spouse, if such parent is living with such spouse, which is reasonably available to the parent.

Paragraph (2) of subsection (d). Provides for the monthly payment of improved dependency and indemnity compensation at the annual rate of $6,384 to two parents who are living together if one is in need of regular aid and attendance; if both are in need of regular aid and attendance, such annual rate would be $8,484. In each such case, the annual rate of improved dependency and indemnity compensation would be reduced by the amount of the parents' combined annual countable incomes.

Under existing section 415(h), any parent entitled to dependency and indemnity compensation benefits under subsection (b), (c), or (d) of existing section 415 who is a patient in a nursing home or is helpless or blind, or is so nearly helpless or blind as to need the regular aid and attendance of another person, receives an allowance of $79 per month in addition to his or her dependency and indemnity compensation benefit. That amount is not reduced by other income.

Subsection (e). Provides for certain special situations under the program of improved dependency and indemnity compensation for surviving parents as follows:

Paragraph (1) of subsection (e). Provides that, where a parent is entitled to improved dependency and indemnity compensation and would also be entitled to improved pension under new section 560, 561, or 562, as added by section 101 of the bill, the Administrator shall pay the parent only the greater benefit.

Paragraph (2) of subsection (e). Provides that, where a parent is eligible for improved dependency and indemnity compensation and is also a veteran entitled to compensation for a service-connected disability, the Administrator shall pay only the greater benefit.

Existing section 3104(b)(1) permits the duplicate receipts of benefits by a person on the basis of his or her own service and on the basis of the death or disability of another person.

Subsection (f). Provides that improved dependency and indemnity compensation benefits may be paid less frequently than monthly when the amount of the annual benefit payable to a parent would be

less than 4 percent of the maximum annual rate payable under subsection (b) of new section 416. There is no comparable provision in current law, but existing section 415 provides that in no event may a parents' monthly dependency and indemnity compensation benefit be less than $5.

Subsection (g). Provides that improved parents' dependency and indemnity compensation benefits shall not be paid to any person residing outside the 50 States and the District of Columbia. There is no comparable provision in current law.

Paragraph (1) of subsection (h). Requires that, in determining annual income, all payments of any kind and from any source, including salary, retirement, or annuity income (including income which has been waived, regardless of whether the waiver was pursuant to a statute, contract, or otherwise; but not including improved dependency and indemnity compensation benefits under this section) be included, with the exception of the exclusions set forth in clauses (A) through (J) of subsection (h)(1) of new section 416. The requirement that all income not specifically excluded be counted is similar to that prescribed in existing section 415(g). Existing section 415(g) provides for 14 exclusions from annual income. Those which are not continued in any form in the Committee bill, are as follows:

(1) Payments of the 6 months' death gratuity (6 months active-duty base pay, payable for deaths of service personnel while on duty). (Sec. 415(g)(1)(A))

(2) Payments under existing chapter 13 (dependency and indemnity compensation), except section 412(a), chapter 11 compensation), and chapter 15 (pension), and under the first sentence of section 9(b) of the Veterans' Pension Act of 1959 (Public Law 86–211) (pension benefits in effect on June 30, 1960). (Sec. 415(g)(1)(C))

(3) Lump-sum death payments under subchapter II of chapter 7 of title 42 (social security burial benefits). (Sec. 415(g)(1)(D))

(4) Payments of State bonuses or similar cash gratuities by any State, based on service in the Armed Forces. (Sec. 415(g)(1)(E))

(5) Payments under policies of Servicemen's Group Life Insurance, United States Government life insurance or National Service Life Insurance, and payments of servicemen's indemnity. (Sec. 415(g)(1)(F))

(6) Ten percent of the amount of payments to an individual under public or private retirement, annuity, endowment, or similar plans or programs. (Sec. 415(g)(1)(G))

(7) Payments received for discharge of jury duty or obligatory civic duties. (Sec. 415(g)(1)(L))

(8) Payments of Retired Serviceman's Family Protection Plan annuities elected under subchapter I of chapter 73 of title 10. (Sec. 415(g)(1)(M))

The exclusions contained in the Committee bill are as follows:

(A) Donations from public or private relief or welfare organizations. This exclusion is the same as that provided in existing section 415(g)(1)(B).

(B) Amounts equal to the amounts paid by a parent for the expenses of the last illness of the veteran, and by a parent of a deceased veteran for the veteran's just debts, the expenses of the

veteran's last illness, and the expenses of the veteran's burial, other than burial expenses reimbursed under chapter 23 of title 38. This exclusion is the same as that provided in existing section 415(g)(1)(J).

(C) Amounts equal to the amounts paid by a parent for the last illness and burial of the parent's deceased spouse. This exclusion is the same as that provided in existing section 415(g)(1)(H).

(D) Proceeds of fire insurance policies. This exclusion is the same as that provided in existing section 415(g)(1)(I).

(E) Profit realized from the disposition of real or personal property other than in the course of a business. This exclusion is the same as that provided under existing section 415(g)(1)(K).

(F) Amounts in joint accounts in banks and similar institutions acquired by reason of the death of the other joint owner. There is no comparable provision under existing law applicable to dependency and indemnity compensation for surviving parents. However, this provision is the same as the exclusion from countable income under the current pension program in existing section 503(a)(15).

(G) $780, plus one-half of the amount exceeding $780, of the current-work income of the parent or parents, as the case may be, and, in the case of a remarried parent, of the parent's spouse with whom the parent is living. In the case of a parent (or parents) in need of regular aid and attendance, the exclusion would be $1,560, plus one-half of the amount exceeding $1,560, of the current-work income of the parent or parents, as the case may be, and, in the case of a remarried parent, of the parent's spouse with whom the parent is living. There are no comparable provisions in current law.

(H) Amounts equal to amounts paid in the previous calendar year by a parent for unreimbursed medical expenses which exceed the lesser of (i) $100 or (ii) 5 percent of the annual income of the parent or parents, as the case may be, and, in the case of a remarried parent, of the parent's spouse with whom the parent is living, subject to the Administrator's determination that the expenses were reasonably necessary to meet the health needs of the parent or parents. Under existing section 415(g)(3), the Administrator is authorized to provide by regulation for the exclusion from countable income of amounts paid by a parent for unusual medical expenses. By regulation (38 C.F.R. 3.262(1)), amounts equal to unreimbursed amounts paid by a parent for his or her own medical expenses and those of certain close relatives are excluded from annual countable income to the extent that they are in excess of 5 percent of total nonpension income.

(I) In the case of a parent in need of regular aid and attendance, amounts equal to amounts paid in a previous calendar year by such parent for unreimbursed expenses incurred in traveling to and from such parent's place of employment, to the extent that such amounts exceed the reasonable expenses which would have been incurred by a nondisabled person traveling by an appropriate means of transportation (including public transportation, if reasonably available) for such travel. There is no comparable provision in current law.

(J) In the case of a parent pursuing a course of education or vocational rehabilitation or training, amounts equal to unreimbursed amounts paid in a previous calendar year for the costs of such education or training, including tuition, fees, books, and materials, and, in the case of a parent in need of regulair aid and attendance, unusual transportation expenses (determined in the same manner as in clause (I) of this paragraph. There is no comparable provision in current law.

Paragraph (2) of subsection (h). Provides that, before applying any current-work income exclusion under paragraph (1) (G) of this subsection, the Administrator shall apply the other exclusions provided for under such paragraph, first to income other than current-work income, and then to current-work income; and provides that the exclusions applicable to current-work income shall apply to all current-work income not otherwise excluded by that subsection. This paragraph thus clarifies the Committee's intention that the value of the current-work income exclusions provided for under this section not be diminished by the operation of the other exclusions (see the analysis of new section 564(b), as added by section 101(a)(2) of the bill, *supra*).

Subsection (i). Provides that a parent shall be considered as living with a spouse even though they reside apart unless they are estranged. There is no comparable provision in current law.

Subsection (j). Provides that the term "current-work income" means any income which is earned income within the meaning of section 401(c)(2)(A) or section 911(b) of the Internal Revenue Code of 1954 (26 U.S.C. 401(c)(2)(A) or 911(b)). (The applicable portions of those sections are set out in full under the analysis of new section 564(f), as added by section 101(a)(2) of the bill.)

Subsection (k). Requires the denial or discontinuance of improved dependency and indemnity compensation benefits to a parent or parents if such parent's or parents', as the case may be, or in the case of a remarried parent, the parent's spouse's estate (net worth) is such that under all the circumstances, including consideration of such parent's, parents' and spouse's income, it is reasonable that some part of the estate or estates be used for the parent's or parents' support. There is no comparable provision in current law.

Subsection (l). Provides for resource reports as a condition of granting or continuing improved dependency and indemnity compensation benefits and consists of paragraphs (1) through (3), as follows:

Paragraph (1) of subsection (l). Authorizes the Administrator of Veterans' Affairs to require appropriate information, proofs, or evidence from any parent applying for or receiving improved dependency and indemnity compensation under this section, in order to determine such parent's income and net worth, and in the case of a remarried parent, the income and net worth of such parent's spouse with whom such parent is living.

Paragraph (2) of subsection (l). Requires each parent applying for or receiving improved dependency and indemnity compensation to file each year with the Veterans' Administration, on a form prescribed by the Administrator, a report showing (1) the parents' income over the previous year, including in the case of a remarried parent the income of such parent's spouse if the parent is living with

such spouse; (2) the parent's estimated income for the year in which the report is filed, including the estimated income of such a remarried parent's spouse; and (3) any expected increases in the parent's net worth and in the net worth of such a remarried parent's spouse. An exemption from this annual reporting requirement may be provided, under regulations to be prescribed by the Administrator, for any person in a category of persons whose sole income is regularly received and derived from a Federal program.

Paragraph (3) of subsection (l). Requires each parent applying for or receiving improved dependency and indemnity compensation to file promptly a revised report whenever there is a material change in the income or net worth of such parent, including the income and net worth of a remarried parent's spouse.

The resource reporting requirements set forth in this section are the same as those prescribed under existing section 415 for the reporting of income, except that, under current law, parents are not required to report their incomes annually if they are age 72 or over and have been receiving parents' DIC for 2 years or more, and there is no express requirement that a remarried parent report the income of such parent's spouse. There is no requirement in current law for parents to file reports of their net worths.

Subsection (m). Provides that, in determining annual income, where a fraction of a dollar is involved, annual income shall be considered to be the next lower dollar amount. This provision is the same as existing section 415(g)(2).

Subsection (n). Provides that overpayments of improved dependency and indemnity compensation to a parent under this section may be deducted, unless waived, from any future payments to such parent. This provision is based on existing section 415(f).

Subsection (b) of section 201 amends the table of sections at the beginning of chapter 13 of title 38 to reflect the insertion of new section 416 and the redesignation of existing sections 416 and 417 as sections 417 and 418, as made by the amendments in subsection (a) of section 201.

Subsection (c) of section 201 amends paragraph (2) of subsection (a) of section 417 (as redesignated by subsection (a)(2) of section 201) relating to dependency and indemnity compensation in cases of prior deaths, in order to eliminate the option given to a parent entitled to death compensation by reason of a death occurring prior to January 1, 1957, to elect to receive, in lieu of death compensation, dependency and indemnity compensation; and to provide that a parent eligible for death compensation under subchapter III of V of chapter 11 of title 38, by reason of a death occurring before January 1, 1957, may, if residing in one of the 50 States or the District of Columbia, elect to receive improved dependency and indemnity compensation under new section 416. If at any time improved dependency and indemnity compensation is paid to such a parent pursuant to such an election, the election would be irrevocable.

TITLE III—MISCELLANEOUS PROVISIONS AND CONFORMING AMENDMENTS

Section 301

Amends paragraph (14) of section 101 of title 38, relating to definitions, to redefine "dependency and indemnity compensation", in part,

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as a monthly or other periodic payment. This conforming amendment is necessary because, under existing section 101(14), dependency and indemnity compensation is defined, in part, as a monthly payment, and new section 416, as added by section 201(a)(3) of the bill, would permit the payment of parents' improved dependency and indemnity compensation benefits less frequently than monthly under certain circumstances.

Section 302

Amends paragraph (15) of section 101 of title 38, relating to definitions, to redefine "pension", in part, as a monthly or other periodic payment. This conforming amendment is necessary because, under existing section 101(15), pension is defined, in part, as a monthly payment, and new sections 561, 562, and 563, as added by section 101(a)(2) of the bill, would permit the payment of improved pension benefits less frequently than monthly under certain circumstances.

Section 303

Amends section 3012(b)(4) of title 38, relating to the effective date of a reduction or discontinuance of pension by reason of a change in income or the corpus of an estate, to provide that the effective date of a reduction or discontinuance of improved pension or improved parents' dependency and indemnity compenastion by reason of a change in income or the corpus of an estate would be the last day of the month in which the change occurs. Under existing section 3012(b)(4), that effective date, for purposes of the current pension and parents' dependency and indemnity compensation programs, is the last day of the calendar year in which any such change occurs.

Section 304

Subsection (a) of section 304 amends chapter 53 of title 38, concerning special provisions relating to benefits, to insert at the end thereof a new section 3112, as follows:

New section 3112, entitled "Annual adjustment of certain benefit rates and income exclusions", consists of subsections (a) and (b), as follows:

Subsection (a). Requires that in any calendar year after 1978 in which benefit payments under title II of the Social Security Act are increased as the result of a determination made under section 215(i) of that Act[1] (42 U.S.C. 415(i)) (a cost-of-living increase), the improved pension and parents' improved dependency and indemnity compensation maximum annual rates in effect during the month in which the determination under section 215(i) is made shall be increased by the same percentage, effective with respect to improved pension and parents' improved dependency and indemnity compensation benefits beginning with those payable for the month in which the annual maximum annual rates are increased. In addition, the dollar amounts shown in subsection (h)(1)(G) of new section 416 and in subsection (a)(7) of new section 564 ($780 and $1,560, the dollar amounts wholly excludable from income derived from current work) shall also be increased by the same percentage. The improved pension and improved parents' dependency and indemnity compensation maximum annual rates and dollar amounts, as so increased, must be published in the Federal Register at the same time as the material

required by section 215(i)(2)(D) of the Social Security Act is published. The amounts as so increased are to be rounded in the manner deemed equitable and appropriate by the Administrator. There are no comparable provisions in current law.

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[1] Section 415(i) of title 42, United States Code (section 215(i) of the Social Security Act), is as follows:

§ 415(i) *Cost-of-living increases in benefits.* (1). For purposes of this subsection—

(A) the term "base quarter" means (i) the calendar quarter ending on March 31 in each year after 1974, or (ii) any other calendar quarter in which occurs the effective month of a general benefit increase under this title;

(B) the term "cost-of-living computation quarter" means a base quarter, as defined in subparagraph (A)(i), in which the Consumer Price Index prepared by the Department of Labor exceeds, by not less than 3 per centum, such Index in the later of (i) the last prior cost-of-living computation quarter which was established under this subparagraph, or (ii) the most recent calendar quarter in which occurred the effective month of a general benefit increase under this title; except that there shall be no cost-of-living computation quarter in any calendar year if in the year prior to such year a law has been enacted providing a general benefit increase under this title or if in such prior year such a general benefit increase becomes effective; and

(C) the Consumer Price Index for a base quarter, a cost-of-living computation quarter, or any other calendar quarter shall be the arithmetical mean of such index for the 3 months in such quarter.

(2)(A)(i) The Secretary shall determine each year beginning with 1975 (subject to the limitation in paragraph (1)(B)) whether the base quarter (as defined in paragraph (1)(A)(i)) in such year is a cost-of-living computation quarter.

(ii) If the Secretary determines that the base quarter in any year is a cost-of-living computation quarter, he shall, effective with the month of June of such year as provided in subparagraph (B), increase the benefit amount of each individual who for such month is entitled to benefits under section 227 or 228, and the primary insurance amount of each other individual under this title (but not including a primary insurance amount determined under subsection (a)(3) of this section), by an amount derived by multiplying each such amount (including each such individual's primary insurance amount or benefit amount under section 227 or 228 as previously increased under this subparagraph) by the same percentage (rounded to the nearest one tenth of 1 percent) as the percentage by which the Consumer Price Index for such cost-of-living computation quarter exceeds such index for the most recent prior calendar quarter which was a base quarter under paragraph (1)(A)(ii) or, if later, the most recent cost-of-living computation quarter under paragraph (1)(B). Any such increased amount which is not a multiple of $0.10 shall be increased to the next higher multiple of $0.10.

(B) The increase provided by subparagraph (A) with respect to a particular cost-of-living computation quarter shall apply in the case of monthly benefits under this title for months after May of the calendar year in which occurred such cost-of-living computation quarter, and in the case of lump-sum death payments with respect to deaths occurring after May of such calendar year.

(C)(i) Whenever the level of the Consumer Price Index as published for any month exceeds by 2.5 percent or more the level of such index for the most recent base quarter (as defined in paragraph (1)(A)(ii) or, if later, the most recent cost-of-living computation quarter, the Secretary shall (within 5 days after such publication) report the amount of such excess to the House Committee on Ways and Means and the Senate Committee on Finance.

(ii) Whenever the Secretary determines that base quarter in a calendar year is also a cost-of-living computation quarter, he shall notify the House Committee on Ways and Means and the Senate Committee on Finance of such determination within 30 days after the close of such quarter, indicating the amount of the benefit increase to be provided, his estimate of the extent to which the cost of such increase would be met by an increase in the contribution and benefit base under section 230 and the estimated amount of the increase in such base, the actuarial estimates of the effect of such increase, and the actuarial assumptions and methodology used in preparing such estimates.

(D) If the Secretary determines that a base quarter in a calendar year is also a cost-of-living computation quarter, he shall publish in the Federal Register within 45 days after the close of such quarter, a determination that a benefit increase is resultantly required and the percentage thereof. He shall also publish in the Federal Register at that time (along with the increased benefit amounts which shall be deemed to be the amounts appearing in sections 227 and 228) a revision of the table of benefits contained in subsection (a) of this section (as it may have been most recently revised by another law or pursuant to this paragraph); and such revised table shall be deemed to be the table appearing in such subsection (a). Such revision shall be determined as follows:

(i) The headings of the table shall be the same as the headings in the table immediately prior to its revision, except that the parenthetical phrase at the beginning of column II shall reflect the year in which the primary insurance amounts set forth in column IV of the table immediately prior to its revision were effective.

(ii) The amounts on each line of column I and column III, except as otherwise provided by clause (v) of this subparagraph, shall be the same as the amounts appearing in each such column in the table immediately prior to its revision.

(iii) The amount on each line of column II shall be changed to the amount shown on the corresponding line of column IV of the table immediately prior to its revision.

(iv) The amounts on each line of column IV and column V shall be increased from the amounts shown in the table immediately prior to its revision by increasing each such amount by the percentage specified in subparagraph (A)(ii) of this paragraph. The amount on each line of column V shall be increased, if necessary, so that such amount is at least equal to one and one-half times the amount shown on the corre-

(Continued)

Subsection (b). Requires that, whenever maximum annual rates are increased in accordance with subsection (a) of this section, an immediate recomputation shall be made of the amount of improved pension or improved parents' dependency and indemnity compensation payable to a person who is also entitled to receive benefits under any other Federal programs the rates of which are adjusted as a result of a determination under section 215(i) of the Social Security Act (42 U.S.C. 415(i)). Such a recomputation shall be made on the basis of the increased benefit amounts payable to such person under such other Federal programs, not withstanding the rule prescribed in existing section 3012(b)(4) of title 38, relating to the effective date of reductions or discontinuance of benefit payments.

Subsection (b) of section 304 amends the table of sections at the beginning of chapter 53 of title 38 to reflect the insertion of new section 3112 by the amendment made in subsection (a) of section 304.

Section 305

Subsection (a) of section 305 provides that, in the case of any person receiving pension or dependency and indemnity compensation on the effective date of the Committee bill, who elects to receive improved parents' dependency and indemnity compensation or improved pension under new section 416, 561, 562, or 563 on or before the last of the third calendar month following the month in which the improved pension and improved parents' dependency and indemnity compensation programs become effective, shall receive improved benefits retroactive to that date to the extent that such benefits exceed amounts actually paid.

Subsection (b) of section 305 provides that nothing in the amendments made by the bill to title 38 shall affect the eligibility of person entitled to receive pension under existing section 521, 541, or 542 of title 38, or parents' dependency and indemnity compensation under existing chapter 13 of title 38, to continue to receive benefits under those sections or that chapter as long as such persons continue to qualify under those sections or that chapter; and that nothing in the bill shall affect the eligibility of persons receiving pension under section 9(b) of the Veterans' Pension Act of 1959, as amended by Public Law 95–204, as long as they continue to qualify under that section as so amended.

(Continued)

sponding line in column IV. Any such increased amount which is not a multiple of $0.10 shall be increased to the next higher multiple of $0.10.

(v) If the contribution and benefit base (determined under section 230) for the calendar year in which the table of benefits is revised is lower than such base for the following calendar year, columns III, IV, and V of such table shall be extended. The amounts on each additional line of column III shall be the amounts on the preceding line increased by $5 until in the last such line of column III the second figure is equal to one-twelfth of the new contribution and benefit base for the calendar year following the calendar year in which such table of benefits is revised. The amount on each additional line of column IV shall be the amount on the preceding line increased by $1, until the amount on the last line of such column is equal to the last line of such column as determined under clause (iv) plus 20 percent of one-twelfth of the excess of the new contribution and benefit base for the calendar year following the calendar year in which such table of benefits is revised (as determined under section 230) over such base for the calendar year in which the table of benefits is revised. The amount in each additional line of column V shall be equal to 1.75 times the amount on the same line of column IV. Any such increased amount which is not a multiple of $0.10 shall be increased to the next higher multiple of $0.10.

(3) As used in this subsection, the term "general benefit increase under this title" means an increase (other than an increase under this subsection) in all primary insurance amounts on which monthly insurance benefits under this title are based.

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Section 306

Subsection (a) of section 306 amends chapter 15 of title 38, concerning pension for non-service-connected disability or death or for service, to add at the end of section 507 a new section 508, as follows:

New section 508, entitled "Special provisions relating to persons residing outside the 50 States and the District of Columbia", consists of subsections (a) and (b), as follows:

Subsection (a). Provides that improved pension benefits may not be paid to persons residing outside the 50 States and the District of Columbia. There is no comparable provision in current law.

Subsection (b). Provides that a veteran, surviving spouse, or surviving child who is residing outside the 50 States and the District of Columbia on the effective date of new section 508 may apply for and receive benefits under existing section 521, 541, or 542, as the case may be, as long as such person continuously resides outside the 50 States and the District of Columbia after that date and remain eligible. There is no comparable provision in current law.

Subsection (b) of section 306 amends the table of sections at the beginning of chapter 15 of title 38 to reflect the insertion of new section 508 by the amendment made in subsection (a) of this section.

Subsection (c) of section 306 mandates the conduct of a study and the submission of a report thereon, as follows:

Paragraph (1) of subsection (c) of section 306 requires the Administrator of Veterans' Affairs to carry out a comprehensive study of the income characteristics of veterans of a period of war, as defined in section 101(11) of title 38, United States Code, and the survivors of such veterans, who are residing outside the 50 States and the District of Columbia, including those who are receiving pension benefits under chapter 15 of title 38 or under section 9(b) of the Veterans' Pension Act of 1959. The study must include (1) an analysis of the issues involved in the payment of non-service-connected pension benefits to such persons; (2) analyses of those aspects of the economy of each foreign country and each territory, possession, and Commonwealth of the United States in which a substantial number of such persons reside which are relevant to such issues, such as the rate of inflation, the standard of living, and subsistence levels in each such foreign country, and each such United States territory, possession, or Commonwealth; (3) estimates of the present and future costs of the payment of pension benefits to such persons; and (4) estimates of the potential costs of paying improved pension benefits to such persons.

Paragraph (2) of subsection (c) of section 306 requires the Administrator to report to the Congress and the President, not later than February 1, 1979, the results of the study required by paragraph (1) of subsection (c) of section 304 together with the Administrator's recommendations as to the desirability of modifying the non-service-connected pension program for wartime veterans and their survivors who are residing outside the 50 States and the District of Columbia, including recommendations as to the desirability of extending eligibility for improved pension benefits to such persons and any modifications which should be made in the improved pension program for such persons if such eligibility were to be extended.

Section 307

Amends paragraph (1) of subsection (a) of section 3203 of title 38, relating to the limitation on the maximum pension payable to a veteran

who has no spouse or child and who is institutionalized at VA expense for more than 2 months, to increase the amount of pension which may be paid in such cases while the veteran remains institutionalized, and, in certain cases, to extend the period during which pension may be paid without regard to such limitation. Under current law, a veteran who has no wife or child and who is being furnished hospital, institutional, or domiciliary care by the VA may not receive pension in excess of $50 per month after the end of the second full calendar month following the month of admission for such care, or after readmission for care within 6 months following the termination of a period of care lasting 2 full calendar months or more.

In the case of a veteran who has no spouse or child and who is being furnished domiciliary care by the VA, the Committee bill provides that, after 2 full calendar months following the veteran's admission for such care, the maximum amount of pension payable shall be $60 per month. In the case of a veteran who has no spouse or child and is being furnished hospital or nursing home care by the VA, the Committee bill provides that, after 3 full calendar months following the veteran's admission for such care, the maximum amount of pension payable shall be $60 per month. However, in the case of such veteran being furnished hospital or nursing home care by the VA, if the Administrator finds that the receipt for 3 additional months of pension benefits to which the veteran is otherwise entitled will reasonably facilitate such veteran's ability to return to the community, the $60 limit would not be applied until the end of the 6th full calendar month after the veteran's admission for such care. In the case of a veteran who has no spouse or child and who has been readmitted for VA domiciliary, hospital, or nursing home care within 6 months following a period of such care which had lasted for at least 2 full calendar months, the maximum pension payable following such readmission could not exceed $60 per month while the veteran remains institutionalized.

TITLE IV—NAMING OF CERTAIN VETERANS' ADMINISTRATION HOSPITALS

Section 401

Names the Veterans' Administration hospital in Tampa, Florida, as the James A. Haley Veterans' Hospital and provides that any reference to such hospital in any United States law, regulation, document, map, record, or other paper shall be deemed to be a reference to the James A. Haley Veterans' Hospital.

Section 402

Names the Veterans' Administration hospital in Bedford, Massachusetts, as the Edith Nourse Rogers Memorial Veterans' Hospital and provides that any reference to such hospital in any United States law, regulation, document, map, record, or other paper shall be deemed to be a reference to the Edith Nourse Rogers Memorial Veterans' Hospital.

TITLE V—EFFECTIVE DATES

Section 501

Provides that the amendments to title 38, United States Code, made by the Committee bill and the provisions of subsections (c) and (d) of

section 304 of the Committee bill shall become effective on October 1, 1978; and that all other provisions of the bill shall be effective upon enactment.

Record of Votes Cast in Committee

Pursuant to section 133(b) of the Legislative Reorganization Act of 1946, as amended, announcement is made that the Members of the Committee on Veterans' Affairs, by unanimous voice vote, voted in favor of a motion to report S. 2384, as amended, favorably to the Senate.

Agency Reports

The Committee requested reports from the Veterans' Administration on January 4, 1978, and the Office of Management and Budget on January 28, 1978.

The Committee received the following reports:

[No. 71]

COMMITTEE ON VETERANS' AFFAIRS, U.S. SENATE

VETERANS' ADMINISTRATION,
OFFICE OF THE ADMINISTRATOR OF VETERANS' AFFAIRS,
Washington, D.C., February 2, 1978.

Hon. ALAN CRANSTON,
Chairman, Committee on Veterans' Affairs, U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: We are pleased to respond to your request for a report on S. 2384, 95th Congress.

The measure, to be known as the Veterans' and Survivors' Income Security Act, would establish a new program of "security pension" benefits payable monthly to wartime veterans who are permanently and totally disabled by reason of non-service-connected disability, or who are age 65 or over, and to surviving spouses and children.

In addition to our views in this report concerning the major provisions of the bill, we are attaching, for the convenience of the committee, a section-by-section analysis of S. 2384.

In the case of a veteran, S. 2384 would provide for the payment of annual rates of pension as follows (in each case reduced by the amount of the veteran's annual income and by the income of a dependent spouse or child which is reasonably available to the veteran):

Veteran without dependent spouse or child	$3,200
Veteran with one dependent (spouse or child)	4,128
Veteran in need of regular aid and attendance without dependents	5,299
Veteran in need of regular aid and attendance with one dependent	6,227
Veteran permanently housebound without dependents	3,976
Veteran permanently housebound with one dependent	4,904
Increase for each additional dependent child	660

The annual security pension rates for permanently and totally disabled surviving spouses (and those age 65 or over) would be the same as those applicable to veterans similarly circumstanced, including rates for surviving spouses in need of regular aid and attendance. As under the current pension program, there would be no separate rate for housebound status for a surviving spouse. The rate would increase for each additional dependent child, similarly to the rate payable to a veteran for a dependent child. The applicable annual rates would be reduced by the amount of the surviving spouse's annual income and the income of a child in the surviving spouse's custody.

The bill would provide an annual rate of security pension of $2,144 for a surviving spouse not permanently and totally disabled and without dependent child. For a surviving spouse not permanently and totally disabled and with one dependent child, the security pension rate would be $2,766, increased by $660 for each child in excess of one.

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The annual rate for each child not in the custody of a surviving spouse who is eligible for security pension would be $660.

The act would generally require that all income from whatever source derived be counted, for purposes of determining basic eligibility and the amount of the security pension payable, subject to the following exclusions:

(*a*) Payments under chapters 11, 13, and 15 of title 38, United States Code (compensation for service-connected disability or death, dependency and indemnity compensation for service-connected deaths, and pension for non-service-connected disability or death, respectively);

(*b*) Donations from public or private relief organizations;

(*c*) Amounts equal to amounts paid by a spouse for the expenses of a veteran's last illness, and by a surviving spouse or child for the veteran's just debts, the expenses of his last illness, and the expenses of his burial that are unreimbursed through the receipt of Veterans' Administration burial benefits.

(*d*) Amounts equal to amounts paid by a veteran for the last illness and burial expenses of a deceased spouse or child, or by a spouse of a living veteran or a surviving spouse for the last illness and burial of a child of the veteran;

(*e*) Fire insurance policy proceeds;

(*f*) Profit from the sale of real or personal property other than in the course of a business;

(*g*) Amounts in joint accounts in banking institutions acquired by reason of the death of the other joint owner;

(*h*) Seven hundred eighty dollars of all earned income (not otherwise excluded) plus one-half of all earned income in excess of $780; and

(*i*) Amounts equal to amounts exceeding $100 paid in the previous calendar year for unreimbursed medical expenditures which are reasonably necessary for the health needs of the veteran, his spouse or children, or his surviving spouse or children (except where the exclusion had been granted in the previous year and adequate medical services were readily available to the patient in a Veterans' Administration facility during the period in which such expenses were incurred).

The measure would require net worth determinations of a veteran, surviving spouse, or surviving child for entitlement to the pension. The determination would be dependent on the net worth of the veteran or surviving spouse and of any dependent for whom the veteran or surviving spouse is receiving increased security pension (but excluding from the net worth of any child reasonable amounts set aside for educational and other similarly worthwhile vocational goals). Security pension payments would be denied or discontinued if the net worth is such that it is reasonable that some portion thereof be consumed for the maintenance of the veteran, surviving spouse, or surviving child.

S. 2384 would also provide for the automatic annual increase of security pension rates and the earned income exclusion by the same percentage and at the same time as social security cost-of-living increases. The measure would also require the Veterans' Administration to recompute the amount of security pension to which a person is en-

titled at the same time that social security benefit rates are increased in such a way that no recipient of security pension would suffer a decrease in security pension attributable to a cost-of-living increase in social security benefits, or other Federal program which provides for automatic annual cost-of-living increases in accord with the social security automatic "indexed" increase.

Another feature of S. 2384 would allow persons in the current pension program to remain under the terms and conditions of that program, or to elect to receive security pension if they are eligible, and allow persons in the "old law" pension program, or those who receive pension based on service during the Spanish-American War or earlier periods of war, to continue in those programs or to elect to receive security pension if they are eligible. Such elections would be irrevocable.

In Public Law 94–432, the Congress declared that the existing non-service-connected pension program "(1) does not provide sufficient assistance to meet the needs of some eligible veterans and survivors; (2) has developed some inconsistencies, inequities, and anomalies which prevent it from operating in the most efficient and equitable manner; and (3) subjects many pensioners annually to reductions in their pensions." (Veterans and Surivors Pension Adjustment Act of 1976, Public Law No. 94–432, § 404, 90 Stat. 1372.)

The Congress also declared, at that time, that it lacked sufficient long-range information as to actual and anticipated financial characteristics of potential pensioners (and their families) upon which to estimate the costs of existing and alternative pension programs. It directed the Veterans' Administration to conduct a thorough and comprehensive study of existing and alternative non-service-connected pension programs and to submit its report and recommendations to the Congress.

Upon our recent completion of that study, certain principles for the development of a new pension program were identified. We recognize that there are areas within the existing pension program which are susceptible to change and would make the program more consistent with its underlying philosophy: to provide a measure of assistance. One such principle is that both veterans and surviving spouses should be required to meet the same basic eligibility standard: permanent and total disability or age 65. To further insure consistency, we propose that the same annual income and net worth limitations, as well as the same benefit rate be applied to all such claimants. Thus, similarly circumstanced claimants would receive identical treatment.

The basic level of assistance to be provided by Veterans' Administration pension benefits should provide a national minimum standard of need determined as necessary to meet a person's daily needs. Recognizing that those pension recipients who are more severely disabled (those permanently housebound or in need of aid and attendance) have greater daily needs, higher support levels would be set for such persons.

To eliminate the disparate treatment of income that occurs under the current law (due to the source of such income), we suggest that all family members' income, regardless of source, be considered in determining the level of support to be provided by Veterans' Administration pension, since such income reduces a pensioner's need. The actual dollar amount of all income, subject only to a limited number of in-

come offsets (which are, in effect, one time income replacements such as fire insurance, veterans' burial expenses, etc.) should be deducted from the support levels established in order to determine the amount of Veterans' Administration pension payable.

The current formula approach generally results in an increase in a pensioner's aggregate income when there is an increase in outside income, such as social security. However, such aggregate income is often not increased by an amount that is reflective of the increased cost of living as measured by the Consumer Price Index. To correct this situation, we propose the annual adjustment of the support levels either by timely action on the part of Congress or by enactment of an automatic cost-of-living adjustment of pension which would "index" benefits to the Consumer Price Index such as under section 215(i) of the Social Security Act.

Under the provisions of S. 2384, the basic annual rates of non-service-connected security pension payable would be equated with the annual income limitations, beyond which pension would not be paid. This would allow a pensioner, with dependents and entitled to benefits by reason of being housebound or in need of regular aid and attendance an increased annual income limitation. We favor this significant departure from the current pension program. Currently, the annual income limitations for pension purposes are not directly affected by a pensioner's housebound status or receipt of aid and attendance allowance, or entitlement to payment for additional dependents. This results in loss of extra amounts attributable to such conditions or such extra dependents when the annual income limitation is reached. This is of considerable disadvantage to the pensioner as against the "dollaring down" approach of S. 2384.

S. 2384 addresses the major deficiencies and inequities of the current pension program. It establishes a security pension which would insure each veteran and surviving spouse an income exceeding a national minimum standard of need ($3,200 annually for a permanently and totally disabled veteran or surviving spouse [or a veteran or surviving spouse over 65], with correspondingly higher rates where there are additional dependents). S. 2384 also eliminates some of the exclusions of income which are most inequitable and discriminatory. In addition, it provides for adjustment in pension rates simultaneously with increases in social security or similar payments. Nevertheless, we perceive certain problems with the proposal. A significant shortcoming is the continued exclusion of income actually available for support in determining countable income and unequal treatment as between a veteran and a surviving spouse with regard to eligibility and rates.

The Veterans' Administration is extremely concerned that available dollars of a needs-based program be provided to those with the greatest need. The exclusion of certain income undermines the basic principles of our recommendations and further gives rise to demands by others to "not count" certain forms of income in determining the eligibility for and the amount of pension benefits to which a person may be entitled. The very existence of an exclusion from countable income is discriminatory as to all who for various reasons have no such income. It is also a very costly element without any benefit flowing therefrom to the most needy. The estimated cost of the exclusion of earned income provided for in S. 2384 over a period of 5 years is $810.5 million.

This bill also fails to comport fully with the principle that veterans and surviving spouses, similarly circumstanced, should be treated equally. Under the proposal a surviving spouse can qualify for pension (albeit at a lower rate) even though not disabled and not 65 years of age. On the other hand, a surviving spouse is not accorded a housebound rate even though physical limitations may be identical with that of a veteran who qualifies for such payment.

For the resasons just discussed and particularly in recognition that the dollars available for a needs-based pension should flow to the pensioners with the greatest need, we are unable to support enactment of S. 2384 in its present form.

On the other hand, with the very evident desire on the part of your committee and the Veterans' Administration to achieve the best possible solution to the problem and develop the fairest and most workable pension reform measure, and since it is apparent we, for the most part, share the same principles and that our differences are fewer than our agreements, we look forward to working with your committee and the staff in the immediate future toward developing a new pension program.

Assuming that there will be no further increase under the current pension program subsequent to Public Law 95–204 (91 Stat. 1455), it is estimated that the cost of S. 2384, if enacted, would be as follows:

Fiscal year.	Millions
1979	$601.6
1980	855.0
1981	1,146.5
1982	1,461.2
1983	1,781.6

Advice has been received from the Office of Management and Budget that there is no objection to the presentation of this report from the standpoint of the administration's program.

Sincerely,

MAX CLELAND,
Administrator.

Enclosure.

SECTION-BY-SECTION ANALYSIS OF S. 2384, 95TH CONGRESS

The first section of this measure provides that it may be cited as the "Veterans' and Survivors' Income Security Act."

TITLE I—SECURITY PENSION FOR VETERANS AND SURVIVORS

Section 101 of this bill would establish a new program of "security pension" benefits payable monthly at annual rates to wartime veterans who are permanently and totally disabled by reason of non-service-connected disability, or who are age 65 or over. The annual rate of pension payable to a disabled veteran ($3,200 if single and without a dependent child, and $4,128 if married or with a dependent child, plus an additional $660 for each child in excess of one) would be equivalent to that payable to a disabled surviving spouse, reduced by the amount of annual income. The annual rate of security pension payable to a veteran who is housebound or in need of regular aid and attendance

would increase (to $3,976 if housebound, and single, and without a dependent child, and $4,904 if married or with a dependent child, plus $660 for each child in excess of one; to $5,299 and $6,227, respectively, if in need of regular aid and attendance). The disabled surviving spouse would only benefit from the receipt of an increased annual rate of security pension based on the need of regular aid and attendance. The security pension payable to a nondisabled surviving spouse would be at a rate ($2,144 if there is no child or if no child is in the surviving spouse's custody, and $2,766 with a dependent child, plus $660 for each child in excess of one) approximately two-thirds that of a disabled surviving spouse, reduced by the amount of annual income. A security pension would be payable to a surviving child of a wartime veteran at an annual rate of $660, reduced by the amount of the child's annual income.

Section 101 would also exclude fewer sources of income in determinations with respect to annual income than are currently excluded under the existing non-service-connected disability pension program.

The few exclusions allowed would represent the receipt by a pensioner of money which is of an extraordinary and nonrecurring nature. The following would be the only Veterans Administration payments excepted from annual income determinations: compensation for service-connected disability or death, dependency and indemnity compensation for service-connected death and pension for non-service-connected disability or death or for service. Other excluded items would be: donations from public or private relief or welfare organizations; amounts paid by a spouse for a veteran's last illness, and by a surviving spouse or child of a deceased veteran for his just debts and expenses of his last illness and burial (which are unreimbursed by the Veterans' Administration); amounts paid by a veteran for the last illness and burial of his deceased spouse or child, or by a spouse of a living veteran of a surviving spouse for the last illness or burial expense of a veteran's child; proceeds of fire insurance policies; profit realized from the sale of real or personal property, other than in the course of business; and amounts in joint accounts in banking institutions acquired through the death of a joint owner. Also excluded, as a "work incentive," would be $780 of all earned income (not otherwise excluded) plus one-half of the amount of income exceeding $780, and the amounts paid in the previous calendar year for unreimbursed medical expenditures exceeding $100, so long as adequate services of the same kind for which an exclusion was granted in the previous year were not readily available at a Veterans' Administration facility. In determining annual income for security pension purposes the income of the veteran's spouse and child, which is reasonably available to or for the veteran, would be considered as his income, as also is the child's income considered the surviving spouse's income if reasonably available to or for the surviving spouse.

As regards net worth, section 101 would require net worth determinations of a veteran, surviving spouse, or surviving child, including that regarding any dependent for whom the veteran or surviving spouse is receiving increased security pension, but excluding from the net worth of any child reasonable amounts set aside for educational or other similarly worthwhile vocational purposes. Such security pension would be denied or discontinued if, under all circumstances, it is rea-

sonable that some portion of the corpus of the particular estate or estates be consumed for the maintenance of the veteran, surviving spouse or child.

Also under section 101, any veteran, surviving spouse, or child eligible for pension benefits under the existing or "old law" pension programs would be able to elect at any time to receive security pension in lieu thereof. However, such election to receive security pension would be irrevocable. As a condition of granting or continuing a security pension, such recipients must file an annual report showing total income received during previous year, the corpus of such person's estate, and such person's estimate of expected total income and net worth for the then current year. Exempted from this annual reporting are such persons without dependents whose income is solely derived from a Federal retirement program, if such person has received security pension for a period of 1 year or more.

Section 101 would also allow those recipients of a "service pension" based on service in the Civil, Indian, and Spanish-American Wars the right to irrevocably elect to receive security pension benefits in lieu thereof. There would be no entitlement to benefits under the current non-service-connected disability or death pension program by virtue of an application made subsequent to the effective date of the security pension program.

TITLE II—MISCELLANEOUS PROVISIONS

Section 201 of this measure would allow for the periodic payment by the Veterans' Administration of pension benefits. This would facilitate that portion of section 101 of the bill which provides for the payment of security pension to a veteran, surviving spouse, or child less frequently than monthly if the amount of the annual benefit was less than 4 percent of the maximum annual rate payable to such person.

Section 202 would provide for the reduction and discontinuance of security pension by reason of a change in a pensioner's income or corpus of estate effective the last day of the month in which the change occurred.

Section 203 would require the Veterans' Administration, after calendar year 1978, to annually adjust security pension rates and the "work incentive" exclusion from annual income by the same percentage and at the same time as social security cost-of-living increases. In addition, the Veterans' Administration would be required to recompute the amount of security pension to which a person is entitled at the same time that social security benefit rates are increased in such a way that no person in receipt of security pension will suffer a reduction in security pension attributable to a cost-of-living increase in social security benefits, or other Federal program providing for automatic annual cost-of-living increases in accord with the social security automatic "indexed" increase.

TITLE III—EFFECTIVE DATE

Section 301 would make the bill effective on October 1, 1978.

[No. 69]

COMMITTEE ON VETERANS' AFFAIRS, U.S. SENATE

EXECUTIVE OFFICE OF THE PRESIDENT,
OFFICE OF MANAGEMENT AND BUDGET,
Washington, D.C., January 26, 1978.

Hon. ALAN CRANSTON,
Chairman, Committee on Veterans' Affairs,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request of January 28, 1977 for the views of this Office on S. 317, a bill to amend title 38 of the United States Code in order to provide service pensions to certain veterans of World War I and pension to the widows of such veterans.

In its report to your committee on S. 317, the Veterans' Administration explains its reasons for recommending against favorable action on the bill. We concur in the views expressed in the report of the Veterans' Administration and, accordingly, recommend against the enactment of S. 317.

Sincerely,

JAMES M. FREY,
Assistant Director for Legislative Reference.

CHANGES IN EXISTING LAW MADE BY S. 2384 AS REPORTED

In accordance with subsection 4 of rule XXIX of the Standing Rules of the Senate, charges in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 38—UNITED STATES CODE

* * * * * * *

PART I—GENERAL PROVISIONS

* * * * * * *

CHAPTER 1—GENERAL

* * * * * * *

§ 101. Definitions

For the purposes of this title—

(1) * * *

* * * * * * *

(14) The term "dependency and indemnity compensation" means a monthly *or other periodic* payment made by the Administrator to a surviving spouse, child, or parent (A) because of a service-connected death occurring after December 31, 1956, or (B) pursuant to the election of a surviving spouse, child, or parent, in the case of such a death occurring before January 1, 1957.

(15) The term "pension" means a monthly *or other periodic* payment made by the Administrator to a veteran because of service, age, or non-service connected disability, or to a surviving spouse or child of a veteran because of the non-service-connected death of the veteran.

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PART II—GENERAL BENEFITS

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CHAPTER 13—DEPENDENCY AND INDEMNITY COMPENSATION FOR SERVICE-CONNECTED DEATHS

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SUBCHAPTER II—DEPENDENCY AND INDEMNITY COMPENSATION

Sec.

410. Death entitling survivors to dependency and indemnity compensation.
411. Dependency and indemnity compensation to a surviving spouse.
412. Benefits in certain cases of in-service or service-connected deaths.
413. Dependency and indemnity compensation to children.
414. Supplemental dependency and indemnity compensation to children.
415. Dependency and indemnity compensation to parents.
[416. Dependency and indemnity compensation in cases of prior deaths.]
416. Improved dependency and indemnity compensation to parents.
417. Dependency and indemnity compensation in cases of prior deaths.
[417.] *418.* [Restriction] *Restrictions* on payments under this chapter.

* * * * * * *

Subchapter I—General

§ 401. Definitions

As used in this chapter—

(1) The term "veteran" includes a person who died in the active military, naval, or air service.

(2) The term "dependency and indemnity compensation" as used in sections 410, 417, and 418 of this chapter includes improved dependency and indemnity compensation as provided for under section 416 of this chapter.

* * * * * * *

§ 415. Dependency and indemnity compensation to parents

(a) * * *

* * * * * * *

(h) The monthly rate of dependency and indemnity compensation payable to a parent shall be increased by $79 if such parent is (1) a patient in a nursing home or (2) helpless or blind, or so nearly helpless or blind as to need or require the regular aid and attendance of another person.

(i)(1) Except as provided in paragraph (4) of this subsection, no parent who makes application for and becomes entitled to dependency and indemnity compensation on or after the effective date of the improved dependency and indemnity compensation program provided for under section 416 of this title may be paid dependency and indemnity compensation under this section.

(2) Any parent who made application under this section prior to such effective date may be paid dependency and indemnity compensation under this section if (A) the Administrator determines, after such date, that such parent is entitled, on the basis of such application, to dependency and indemnity compensation, and (B) such parent elects to receive dependency and indemnity compensation under this section in lieu of improved dependency and indemnity compensation under section 416 of this title.

(3) Except as provided in subsection (g) of section 416 of this title, any parent receiving dependency and indemnity compensation benefits under this chapter and any parent receiving death compensation benefits under subchapter III or V of chapter 11 of this title who meets the eligibility requirements of the improved dependency and indemnity compensation program provided for under section 416 of this title may elect at any time to receive improved dependency and indemnity compensation under such section 416 in lieu of such dependency and indemnity compensation under this chapter or death compensation under either such subchapter. If at any time improved dependency and indemnity compensation is paid pursuant to such an election, the election shall be irrevocable.

(4) Any parent residing outside the fifty States and the District of Columbia on the effective date of the improved dependency and indemnity compensation program provided for under section 416 of this title who becomes eligible for dependency and indemnity compensation on or after such date shall be eligible, but only as long as such parent continuously resides outside the fifty States and the District

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of Columbia after such date and such parent qualifies for benefits under this section, to apply for and receive benefits under this section.

§ 416. Improved dependency and indemnity compensation to parents

(a) Improved dependency and indemnity compensation shall be paid to the parent or parents of a deceased veteran at the rate prescribed by this section if during the one-year period immediately preceding such veteran's death the veteran contributed one-half or more to the support of such parent or parents.

(b) If there is only one parent, or there are two parents living apart, improved dependency and indemnity compensation shall be paid to such parent or to each such parent monthly at the annual rate of $3240, unless such parent (or parents) is entitled to improved dependency and indemnity compensation at the rate provided by subsection (d) of this section, reduced by the amount of such parent's or each such parent's income and the income of the spouse of a remarried parent, if such parent is living with such spouse, to the extent that such spouse's income is reasonably available to or for such parent.

(c) If there are two parents living together, improved dependency and indemnity compensation shall be paid to such parents monthly at the annual rate of $4284, reduced by the amount of such parents' annual income.

(d) (1) If a parent entitled to improved dependency and indemnity compensation under subsection (b) of this section is in need of regular aid and attendance, the annual rate of improved dependency and indemnity compensation payable monthly to such parent shall be $5340, reduced by the amount of such parent's annual income and the income of the spouse of a remarried parent, if such parent is living with such spouse, to the extent that such spouse's income is reasonably available to or for such parent.

(2) If there are two parents living together who are entitled to improved dependency and indemnity compensation under subsection (c) of this section and one parent is in need of regular aid and attendance, the annual rate of improved dependency and indemnity compensation payable monthly to such parents shall be $6,384. If both such parents are in such need of regular aid and attendance, the annual rate payable monthly to such parents shall be $8,484. The rate payable shall be reduced by the amount of the parents' annual income.

(e) (1) Where a parent is found to be entitled to improved dependency and indemnity compensation under this section and such parent is also entitled to improved pension under section 561, 562, or 563 of this title, the Administrator shall pay such parent only the greater benefit.

(2) Where a parent is found to be entitled to improved dependency and indemnity compensation under this section and such parent is also a veteran entitled to compensation for a service-connected disability, the Administrator shall pay such parent only the greater benefit.

(f) Notwithstanding subsections (b), (c), and (d) of this section, benefits under this section may be paid less frequently than monthly where the amount of the annual benefit would be less than 4 per centum of the maximum annual rate payable to a parent under subsection (b) of this section.

(g) Improved dependency and indemnity compensation benefits payable under this section shall not be paid to any person residing outside the fifty States and the District of Columbia.

(h)(1) In determining annual income under this section, all payments of any kind or from any source (including such salary, retirement or annuity payments, or similar income as has been waived, irrespective of whether the waiver was made pursuant to statute, contract, or otherwise; but not including improved dependency and indemnity compensation benefits under this section) shall be included except—

(A) donations from public or private relief or welfare organizations;

(B) amounts equal to amounts paid by a parent for the expenses of a veteran's last illness, and by a parent of a deceased veteran for—

(i) the veteran's just debts,

(ii) the expenses of the veteran's last illness, and

(iii) the expense of the veteran's burial to the extent that such expenses are not reimbursed under chapter 23 of this title;

(C) amounts equal to amounts paid by a parent for the last illness and burial of the parent's deceased spouse;

(D) proceeds of fire insurance policies;

(E) profit realized from the disposition of real or personal property other than in the course of a business;

(F) amounts in joint accounts in banks and similar institutions acquired by reason of the death of the other joint owner;

(G)(i) except as provided in subclause (ii) of this clause, $780, plus one-half of the amount which exceeds $780, of (I) the current-work income of such parent or parents, and (II) in the case of a parent who has remarried, the current-work income of such parent and such parent's spouse with whom such parent is living; or

(ii) in the case of a parent in need of regular aid and attendance, $1,560, plus one-half of the amount which exceeds $1,560, of (I) the current-work income of such parent or parents, and (II) in the case of a parent who has remarried, the current-work income of such parent and such parent's spouse with whom such parent is living;

(H) amounts equal to amounts paid in the previous calendar year by a parent for unreimbursed medical expenses which exceed the lesser of (i) $100, or (ii) 5 per centum of the annual income of the parent, parents, or, in the case of a parent who has remarried, the annual income of such parent and such parent's spouse with whom such parent is living, to the extent that the Administrator determines, under regulations which the Administrator shall prescribe, that such expenses were reasonably necessary for the health needs of the parent or parents;

(I) in the case of a parent in need of regular aid and attendance, amounts equal to amounts paid in the previous calendar year by such parent for unreimbursed expenses incurred for travel to and from such parent's place of employment, to the extent that

such amounts exceed the reasonable expenses which would have been incurred by a nondisabled person using an appropriate means of transportation (public transportation if reasonably available) for such travel; and

(J) in the case of a parent pursuing a course of education or vocational rehabilitation or training, amounts equal to amounts paid in the previous calendar year by such parent for such course of education or vocational rehabilitation or training, including amounts paid for tuition, fees, books, and materials, and in the case of a parent in need of regular aid and attendance, amounts paid for unusual transportation expenses (determined in the same manner as in clause (I) of this paragraph).

(2)(A) Before applying any of the exclusions from annual income provided for under clause (G) of paragraph (1) of this subsection, the Administrator shall apply all of the exclusions from annual income provided for under clauses (A) through (F) and (H) through (J) of such paragraph, first to income other than current-work income and next to current-work income.

(B) The exclusions from annual income which are provided for in clause (G) of paragraph (1) of this subsection shall apply to all current-work income not otherwise excluded under this subsection.

(i) A parent shall be considered as living with a spouse, even though they reside apart, unless they are estranged.

(j) As used in subsection (h) of this section, the term "current-work income" means any income which is earned income within the meaning of section 401(c)(2)(A) and section 911(b) of the Internal Revenue Code of 1954 (26 U.S.C. 401(c)(2)(A) and 911(b)).

(k) The Administrator shall deny or discontinue payment of improved dependency and indemnity compensation to a parent under this section when the corpus of the estate or estates of the parent, the parents, and the spouse of a remarried parent with whom such parent is living, is such that under all the circumstances, including the consideration of such parent's, parents', or spouse's income, it is reasonable that some part of the corpus of such estate or estates be consumed for the parent's or parents' maintenance.

(l) As a condition of granting or continuing improved dependency and indemnity compensation under this section, the Administrator—

(1) may require from any parent applying for, or in receipt of, improved dependency and indemnity compensation such information, proofs, or evidence as the Administrator determines to be necessary in order to determine the annual income and the corpus of the estate of such parent;

(2) shall require that any such parent, other than a person in any category of persons whose sole income is regularly received and derived from a Federal program and who are exempted from the requirements of this clause under regulations which the Administrator shall prescribe, file each year with the Veterans' Administration (on the form prescribed for such purpose by the Administrator) a report showing (A) the total income which such parent received (and in the case of a remarried parent, the total income which such remarried parent's spouse received) during the preceding, and the corpus of the estate of such parent (and in

the case of a remarried parent, the corpus of the estate of such remarried parent's spouse) at the end of that year, and (B) such parent's estimate for the then current year of the total income such parent expects to receive (and in the case of a remarried parent, the total income which such remarried parent's spouse expects to receive) and of any expected increase in the corpus of the estate of such parent (and in the case of a remarried parent, any expected increase in the corpus of the estate of such remarried parent's spouse); and

(3) shall require that any such parent promptly file a revised report whenever there is a material change in the estimated annual income of such parent (or such spouse) or a material change in such parent's estimate of the corpus of the estate of such parent (or such spouse).

(m) Where a fraction of a dollar is involved, annual income shall be fixed at the next lower dollar amount.

(n) If the Administrator ascertains that there have been overpayments to a parent under this section, the Administrator shall deduct such overpayments (unless waived) from any future payments made to such parents under this section.

§ [416] *417.* Dependency and indemnity compensation in cases of prior deaths

(a) (1) Any person who is eligible as a surviving spouse or child for death compensation by reason of a death occurring before January 1, 1957, may receive dependency and indemnity compensation upon application therefor.

[(2) Any person who is eligible as a parent, or, but for such person's annual income, would be eligible as a parent, for death compensation by reason of a death occurring before January 1, 1957, may receive dependency and indemnity compensation upon application therefor; however, the annual income limitations established by section 415 of this title shall apply to each such parent.]

(2) Except as provided in subsection (g) of section 416 of this title, any parent receiving death compensation under subchapter III or V of chapter 11 of this title by reason of a death occurring before January 1, 1957, shall, if such parent so elects, be paid improved dependency and indemnity compensation at the rates prescribed by section 416 of this title and under the conditions applicable under that section to parents of veterans whose deaths occurred on or after January 1, 1957. If at any time improved dependency and indemnity compensation is paid pursuant to such an election, the election shall be irrevocable.

* * * * * * *

§ [417] *418.* Restrictions on payments under this chapter

No person eligible for dependency and indemnity compensation by reason of any death occurring after December 31, 1956, shall be eligible by reason of such death for any payments under (1) provisions of law administered by the Veterans' Administration providing for the payment of death compensation or death pension, or (2) the Federal Employees' Compensation Act.

* * * * * * *

CHAPTER 15—PENSION FOR NON-SERVICE-CONNECTED DISABILITY OR DEATH OR FOR SERVICE

SUBCHAPTER I—GENERAL

Sec.
501. Definitions.
502. Determinations with respect to disability.
503. Determinations with respect to annual income.
504. Persons heretofore having a pensionable status.
505. Payment of pension during confinement in penal institutions.
506. Resource reports and overpayment adjustments.
507. Disappearance.
508. Special provision relating to persons residing outside the fifty States and the District of Columbia.

* * * * * * *

SUBCHAPTER IV—IMPROVED PENSION FOR NON-SERVICE-CONNECTED DISABILITY OR DEATH

561. Improved pension for veterans of a period of war.
562. Improved pension for surviving spouses of veterans of a period of war.
563. Improved pension for surviving children of veterans of a period of war.
564. Determinations with respect to annual income; income exclusions.
565. Net worth limitation.
566. Election of improved pension benefits.
567. Definitions.

SUBCHAPTER [IV] V—ARMY, NAVY, AIR FORCE, AND COAST GUARD MEDAL OF HONOR ROLL

[560] *571.* Medal of honor roll; persons eligible.
[561] *572.* Certificate.
[562] *573.* Special provisions relating to pension.

Subchapter I—General

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§ 503. Determinations with respect to annual income

(a) In determining annual income under *subchapters II and III of* this chapter, all payments of any kind or from any source (including salary, retirement or annuity payments, or similar income, which has been waived, irrespective of whether the waiver was made pursuant to statute, contract, or otherwise) shall be included except—

(1) * * *

* * * * * * *

§ 504. Persons heretofore having a pensionable status

The pension benefits of subchapters II [and III] *III, and IV* of this chapter shall, notwithstanding the service requirements of such subchapters, be granted to persons heretofore recognized by law as having a pensionable status.

* * * * * * *

§ 506. Resource reports and overpayment adjustments

(a) As a condition of granting or continuing pension under sections 521, 541, or 542 of this title, the Administrator—

(1) may require from any person applying for, or in receipt of, pension thereunder such information, proofs, or evidence as the Administrator desires in order to determine the annual income and the corpus of the estate of such person;

(2) shall require that any such person, other than a child or a person who has attained seventy-two years of age and has been paid pension thereunder during two consecutive calendar years, file each year with the Veterans' Administration (on the form prescribed by the Administrator) a report showing the total income which such person received during the preceding year, the corpus of such person's estate at the end of that year, and such person's estimate for the then current year of the total income such person expects to receive and of any expected increase in the corpus of such person's estate; and

(3) shall require that any such person promptly file a revised report whenever there is a material change in such person's estimated annual income or a material change in such person's estimate of the corpus of such person's estate.

(b) As a condition of granting or continuing improved pension under section 561, 562, or 563 of this title, the Administrator—

(1) may require from any person applying for, or in receipt of, improved pension such information, proofs, or evidence as the Administrator determines to be necessary in order to determine the annual income and the corpus of the estate of such person, and of any spouse and child for whom the person is receiving or is to receive increased improved pension, and, in the case of a surviving child, of any person with whom such child is residing who is legally responsible for such child's support under the laws of the State in which the child resides;

(2) shall require that any such applicant or recipient, other than a person in any category of persons whose sole incomes are regularly received and derived from a Federal program and who are exempted from the requirements of this clause under regulations which the Administrator shall prescribe, file each year with the Veterans' Administration (on the form prescribed for such purpose by the Administrator) a report showing—

(A) the total income which such applicant or recipient (and any such spouse or dependent child) received during the preceding year, the corpus of the estate of such applicant or recipient (and of any such spouse or dependent child) at the end of such year, and in the case of a surviving child, the income and corpus of the estate of any person with whom such child is residing who is legally responsible for such child's support under the laws of the State in which such child resides;

(B) such applicant's or recipient's estimate for the then current year of the total income such applicant or recipient (and any such spouse or dependent child) expects to receive and of any expected increase in the corpus of the estate of such applicant or recipient (and of any such spouse or dependent child); and

(C) in the case of a surviving child, the total income of any person with whom such child is residing who is legally responsible for such child's support under the laws of the State in which such child resides and of any expected increase in the corpus of the estate of such person;

(3) shall require that any such applicant or recipient promptly file a revised report whenever there is a material change in the estimated annual income of such applicant or recipient (or of any such spouse or dependent child) or a material change in such applicant's or recipient's estimate of the corpus of the estate of such applicant or recipient (or of any such spouse or dependent child), and in the case of a surviving child, a material change in the estimated annual income or corpus of the estate of any person with whom such child is residing who is legally responsible for such child's support under the laws of the State in which such child resides; and

(4) shall require that any such applicant or recipient promptly notify the Administrator of any change in the dependency status of any spouse or child for whom such applicant or recipient is receiving or is to receive increased improved pension.

[(b)] *(c)* If there is an overpayment of pension under section 521, 541, [or 542] *542, 561, 562, or 563* of this title, the amount thereof shall be deducted (unless waived) from any future payments made thereunder to the person concerned.

§ 507. Disappearance

Where a veteran receiving pension under subchapter II *or IV* of this chapter disappears, the Administrator may pay the pension otherwise payable to such veteran's spouse and children. In applying the provisions of this section, the Administrator may presume, without reports pursuant to section 506(a) of this title, that the status of the veteran at the time of disappearance, with respect to permanent and total disability, income, and net worth, continues unchanged. Payments made to a spouse or child under this section shall not exceed the amount to which each would be entitled if the veteran died of a non-service-connected disability.

§ 508. Special provision relating to persons residing outside the fifty States and the District of Columbia

(a) Improved pension benefits provided for under subchapter IV of this chapter may not be paid to any person residing outside the fifty States and the District of Columbia.

(b) Any person residing outside the fifty States and the District of Columbia on the effective date of this section who becomes eligible for pension on or after such date shall be eligible, but only as long as such person continuously resides outside the fifty States and the District of Columbia after such date and such person qualifies for benefits under subchapter II or III of this chapter, to apply for and receive benefits under section 521 in the case of a veteran, under section 541 in the case of a surviving spouse, or under section 542 in the case of a surviving child.

Subchapter II—Veterans' Pensions

SERVICE PENSION

* * * * * * *

§ 512. Spanish-American War veterans

(a)(1) The Administrator shall pay to each veteran of the Spanish-American War who meets the service requirements of this subsection

a pension at the following monthly rate:

(A) $101.59; or

(B) $135.45 if the veteran is in need of regular aid and attendance.

(2) A veteran meets the service requirements of this subsection if such veteran served in the active military or naval service—

(A) for ninety days or more during the Spanish-American War;

(B) during the Spanish-American War and was discharged or released from such service for a service-connected disability; or

(C) for a period of ninety consecutive days or more and such period began or ended during the Spanish-American War.

(3)(A) [Any] *Except as provided in section 508 of this title, any* veteran eligible for pension under this [subsection] *section* shall, if such veteran so elects, be paid, *in lieu of pension under this section or section 521 of this title, improved* pension at the rates prescribed by section [521] *561 of this* [title,] *title* and under the conditions (other than the service requirements) applicable to *improved* pension paid under [that] *such* section *561* [to veterans of World War 1]. *Notwithstanding subparagraph (B) of this paragraph,* [If] *if at any time improved* pension is paid pursuant to such an election, the election shall be [irrevocable, except as provided in subparagraph (B)] *irrevocable.*

(B) [The Administrator shall pay each month to each] *In the case of any veteran of the* Spanish-American War [veteran] who is receiving, or entitled to receive, pension based on a need [of] *for* regular aid and attendance [whichever amount is greater], *the Administrator shall pay monthly to such veteran pension at the rate which* (i) [that] *is* provided *for* [by subparagraph (B) of] *under* subsection (a)(1)(B) of this section, or (ii) [that which is] *would be* payable to [the veteran under section 521 of this title if] such veteran [has elected, or would be payable] if such veteran were [to elect, to receive] *receiving* pension under [such] section [pursuant to subparagraph (A)] *521* of this [paragraph] *title, whichever is the greater.* Each change in the amount of pension payment required by this subparagraph shall be effective as of the first day of the month during which the facts of the particular case warrant such change, and shall be made without specific application therefor.

(b)(1) The Administrator shall pay to each veteran of the Spanish-American War who does not meet the service requirements of subsection (a), but who meets the service requirements of this subsection, a pension at the following monthly rate:

(A) $67.73; or

(B) $88.04 if the veteran is in need of regular aid and attendance.

(2) A veteran meets the service requirements of this subsection if such veteran served in the active military or naval service—

(A) for seventy days or more during the Spanish-American War; or

(B) for a period of seventy consecutive days or more and such period began or ended during the Spanish-American War.

NON-SERVICE-CONNECTED DISABILITY PENSION

§ 521. Veterans of the Mexican border period, World War I, World War II, the Korean conflict, or the Vietnam era

(a) * * *

* * * * * * *

(i) (1) Except as provided in section 508 of this title, no veteran who makes application for and becomes entitled to pension on or after the effective date of the improved pension program provided for under section 561 of this title may be paid pension under this section.

(2) Any veteran who made application for pension under this section prior to such effective date may be paid pension under this section if (A) the Administrator determines, after such date, that such veteran is entitled, on the basis of such application, to pension, and (B) such veteran elects to receive pension under this section in lieu of improved pension under section 561 of this title.

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Subchapter III—Pensions to Surviving Spouses and Children

WARS BEFORE WORLD WAR I

§ 532. Surviving spouses of Civil War veterans

(a) The Administrator shall pay to the surviving spouse of each Civil War veteran who met the service requirements of this section a pension at the following monthly rate:

(1) $40.64 if such surviving spouse is below seventy years of age; or

(2) $70 if such surviving spouse is seventy years of age or older;

unless such surviving spouse was the spouse of the veteran during such veteran's service in the Civil War, in which case the monthly rate shall be $75.

(b) If there is a child of the veteran, the rate of pension paid to the surviving spouse under subsection (a) shall be increased by $8.13 per month for each such child.

(c) A veteran met the service requirements of this section if such veteran served for ninety days or more in the active military or naval service during the Civil War, as heretofore defined under public laws administered by the Veterans' Administration, or if such veteran was discharged or released from such service upon a surgeons' certificate of disability.

(d) No pension shall be paid to a surviving spouse of a veteran under this section unless such surviving spouse was married to such veteran—

(1) before June 27, 1905; or

(2) for one year or more; or

(3) for any period of time if a child was born of the marriage or was born to them before the marriage.

(e) Any surviving spouse eligible for pension under this section shall, if such surviving spouse so elects, be paid, in lieu of pension under this section or section 541 of this title, improved pension at the rates prescribed by section 562 of this title and under the conditions (other than the service requirements) applicable under such section

562 to surviving spouses of veterans of a period of war. If at any time improved pension is paid pursuant to such an election, the election shall be irrevocable.

§ 533. Children of Civil War veterans

(*a*) Whenever there is no surviving spouse entitled to pension under section 532 of this title, the Administrator shall pay to the children of each Civil War veteran who met the service requirements of section 532 of this title a pension at the monthly rate of $73.13 for one child, plus $8.13 for each additional child, with the total amount equally divided.

(*b*) *Any child eligible for pension under this section shall, if such child so elects, be paid, in lieu of pension under this section or section 542 of this title, improved pension at the rate prescribed by section 563 of this title and under the conditions (other than the service requirements) applicable under such section 563 to children of veterans of a period of war. If at any time improved pension is paid pursuant to such an election, the election shall be irrevocable.*

§ 534. Surviving spouses of Indian War veterans

(a) The Administrator shall pay to the surviving spouse of each Indian War veteran who met the service requirements of section 511 of this title a pension at the following monthly rate:

(1) $40.64 if such surviving spouse is below seventy years of age; or

(2) $70 if such surviving spouse is seventy years of age or older; unless such surviving spouse was the spouse of the veteran during such veteran's service in one of the Indian Wars, in which case the monthly rate shall be $75.

(b) If there is a child of the veteran, the rate of pension paid to the surviving spouse under subsection (a) shall be increased by $8.13 per month for each such child.

(c) No pension shall be paid to a surviving spouse of a veteran under this section unless such surviving spouse was married to such veteran—

(1) before March 4, 1917; or

(2) for one year or more; or

(3) for any period of time if a child was born of the marriage, or was born to them before the marriage.

(*d*) *Any surviving spouse eligible for pension under this sect shall, if such surviving spouse so elects, be paid, in lieu of pensi under this section or section 541 of this title, improved pension the rates prescribed by section 562 of this title and under the co tions (other than the service requirements) applicable under such sec tion 562 to surviving spouses of veterans of a period of war. If at any time improved pension is paid pursuant to such an election, the election shall be irrevocable.*

§ 535. Children of Indian War veterans

(*a*) Whenever there is no surviving spouse entitled to pension under section 534 of this title, the Administrator shall pay to the children of each Indian War veteran who met the service requirements of section 511 of this title a pension at the monthly rate of $73.13 for one child, plus $8.13 for each additional child, with the total amount equally divided.

(b) Any child eligible for pension under this section shall, if such child so elects, be paid, in lieu of pension under this section or section 542 of this title, improved pension at the rate prescribed by section 563 of this title and under the conditions (other than the service requirements) applicable under such section 563 to children of veterans of a period of war. If at any time improved pension is paid pursuant to such an election, the election shall be irrevocable.

§ 536. Surviving spouses of Spanish-American War veterans

(a) The Administrator shall pay to the surviving spouse of each Spanish-American War veteran who met the service requirements of section 512(a) of this title a pension at the monthly rate of $70, unless such surviving spouse was the spouse of the veteran during such veteran's service in the Spanish-American War, in which case the monthly rate shall be $75.

(b) If there is a child of the veteran, the rate of pension paid to the surviving spouse under subsection (a) shall be increased by $8.13 per month for each such child.

(c) No pension shall be paid to a surviving spouse of a veteran under this section unless such surviving spouse was married to such veteran—

(1) before January 1, 1938; or

(2) for one year or more; or

(3) for any period of time if a child was born of the marriage, or was born to them before the marriage.

(d) (1) [Any] *Except as provided in section 508 of this title, any* surviving spouse eligible for pension under this section shall, if such surviving spouse so elects, be paid, *in lieu of pension under this section or section 541 of this title, improved* pension at the rates prescribed by section [541] *562* of this [title,] *title* and under the conditions (other than the service requirements) applicable [to pension paid] under [that] *such* section *562* to surviving spouses of veterans of [World War I] *a period of war.* [If] *Notwithstanding paragraph (2) of this subsection, if at any time improved* pension is paid pursuant to such an election, the election shall be [irrevocable, except as provided in paragraph (2)] *irrevocable.*

(2) The Administrator shall pay each month to the surviving spouse of each Spanish-American War veteran who is receiving, or entitled to receive, pension based on a need of regular aid and attendance, whichever amount is greater (A) that which is payable to such surviving spouse under subsections (a) and (b) of this section as increased by section 544 of this title; or (B) that which is payable under section 541 of this title, as increased by such section 544, to a surviving spouse of a World War I veteran with the same annual income and corpus of estate. Each change in the amount of pension required by this paragraph shall be effective as of the first day of the month during which the facts of the particular case warrant such change, and shall be made without specific application therefor.

§ 537. Children of Spanish-American War veterans

(a) Whenever there is no surviving spouse entitled to pension under section 536 of this title, the Administrator shall pay to the children of each Spanish-American War veteran who met the service requirements

of section 512(a) of this title a pension at the monthly rate of $73.13 for one child, plus $8.13 for each additional child, with the total amount equally divided.

(b) Except as provided in section 508 of this title, any child eligible for pension under this section shall, if such child so elects, be paid, in lieu of pension under this section or section 542 of this title, improved pension at the rate prescribed by section 563 of this title and under the conditions (other than the service requirements) applicable under such section 563 to children of veterans of a period of war. If at any time improved pension is paid pursuant to such an election, the election shall be irrevocable.

MEXICAN BORDER PERIOD, WORLD WAR I, WORLD WAR II, THE KOREAN CONFLICT, AND THE VIETNAM ERA

§ 541. Surviving Spouses of Mexican border period, World War I, World War II, Korean conflict, or Vietnam era veterans

(a) * * *

* * * * * * *

(g)(1) Except as provided in section 508 of this title, no surviving spouse who makes application for and becomes entitled to pension on or after the effective date of the improved pension program provided for under section 562 of this title may be paid pension under this section.

(2) Any surviving spouse who made application for pension under this section prior to such effective date may be paid pension under this section if (A) the Administrator determines, after such date, that such surviving spouse is entitled, on the basis of such application, to pension, and (B) such surviving spouse elects to receive pension under this section in lieu of improved pension under section 562 of this title.

§ 542. Children of Mexican border period, World War I, World War II, Korean conflict, or Vietnam era veterans

(a) Whenever there is no surviving spouse entitled to pension under section 541 of this title, the Administrator shall pay to the child or children of each veteran of the Mexican border period, World War I, World War II, the Korean conflict, or the Vietnam era, who met the service requirements of section 521 of this title, or who at the time of death was receiving (or entitled to receive) compensation or retirement pay for a service-connected disability, pension at the monthly rate of $61 for one child, and $26 for each additional child.

(b) Pension prescribed by this section shall be paid to eligible children in equal shares.

(c) No pension shall be paid under this section to a child whose annual income, excluding earned income, exceeds $3,080.

(d)(1) Except as provided in section 508 of this title, no surviving child, not in the custody of a surviving spouse eligible for pension under section 541 of this title or improved pension under section 562 of this title, who makes application for and becomes entitled to pension on or after the effective date of the improved pension program provided for under section 563 of this title may be paid pension under this section.

(2) Any surviving child, not in the custody of a surviving spouse eligible for improved pension under section 562 of this title, who made application for pension under this section prior to such effective date may be paid pension under this section if (A) the Administrator determines, after such date, that such surivving child is entitled, on the basis of such application, to pension, and (B) such child elects to receive pension under this section in lieu of improved pension under section 563 of this title.

* * * * * * *

Subchapter IV—Improved Pension for Non-Service-Connected Disability or Death

§ 561. Improved pension for veterans of a period of war

(a) The Administrator shall pay improved pension at the rate prescribed by this section to each veteran of a period of war who meets the service requirements of this section (as prescribed in subsection (h) of this section) and who is permanently and totally disabled from non-service-connected disability not the result of the veteran's willful misconduct.

(b) If the veteran is unmarried (or married but not living with or not reasonably contributing to the support of such veterans spouse) and has no child to whose support the veteran is reasonably contributing, improved pension shall be paid to the veteran monthly at the annual rate of $3,240, unless the veteran is entitled to improved pension at the rate provided by paragraph (1) of subsection (d) of this section or by subsection (e) of this section, reduced by the amount of the veteran's annual income.

(c) If the veteran is married and living with or reasonably contributing to the support ofsuch veteran's spouse or has a child to whose support the veteran is reasonably contributing, improved pension shall be paid to the veteran monthly at the annual rate of $4,284, unless the veteran is entitled to improved pension at the rate provided by paragraph (2) of subsection (d) or by subsection (e) of this section. If a veteran who is entitled to improved pension at the rate provided for under this subsection has two or more such family members, the annual rate shall be increased by $660 for each such family member in excess of one. In each case, the rate payable shall be reduced by the amount of the veteran's annual income and the annual income of such family members.

(d)(1) If the veteran is in need of regular aid and attendance, the annual rate of improved pension payable monthly to the veteran under subsection (b) of this section shall be $5,340, reduced by the amount of the veteran's annual income.

(2) If the veteran is in need of regular aid and attendance, the annual rate of improved pension payable monthly to the veteran under subsection (c) of this section shall be $6,384. If such veteran has two or more family members, as described in subsection (c) of this section, the annual improved pension rate shall be increased by $660 for each such family member in excess of one. In each case, the rate payable shall be reduced by the amount of the veteran's annual income and the annual income of such family members.

(e) If the veteran has a disability rated as permanent and total and (1) has additional disability or disabilities independently ratable at 60 per centum or more, or (2) by reason of a disability or disabilities, is permanently housebound but does not qualify for improved pension at the aid and attendance rate under subsection (d) of this section, the annual rate of improved pension payable monthly to the veteran under subsection (b) of this section shall be $4,016, and the annual rate of improved pension payable monthly to the veteran under subsection (c) of this section shall be $5,060. If such veteran has two or more family members, as described in subsection (c) of this section, the annual improved pension rate shall be increased by $660 for each such family member in excess of one. In each case, the rate payable shall be reduced by the amount of the veteran's annual income and the annual income of such family members.

(f) Where two veterans are married to one another and each meets the disability and service requirements of this section (as prescribed in subsections (a) and (h), respectively, of this section), the annual rates of improved pension payable monthly to such veterans shall be as provided in this subsection. The annual rate of improved pension payable monthly to such veterans shall be a combined annual rate of $4,284. If either veteran is in need of regular aid and attendance, such annual rate shall be $6,384. If both veterans are in need of regular aid and attendance, such annual rate shall be $8,484. If either veteran would be entitled (if not married to a veteran) to the rate provided for under subsection (e) of this section, such annual rate shall be $5,060. If both veterans would be entitled (if not married to one another) to such rate, such annual rate shall be $5,836. If one veteran is in need of regular aid and attendance and the other would be entitled (if not married to a veteran) to the rate provided for under subsection (c) of this section, such annual rate shall be $7,160. In each case, the annual rate shall be increased by $660 for each child to whose support either veteran is, or both veterans are, reasonably contributing and reduced by the amount of the annual income of both veterans and the annual income of each such child.

(g) The amount of improved pension payable to any veteran under subsection (b), (c), (d), (e), or (f) of this section shall be increased by an amount equal to 25 per centum of the amount otherwise payable in the case of veterans of a period of war if veterans of such period of war were not provided educational benefits or home loan benefits similar to those provided to veterans of later periods of war under chapters 34 and 37, respectively, of this title or under prior corresponding provisions of law.

(h) A veteran meets the service requirements of this section if such veteran served in the active military, naval, or air service—

(1) for ninety days or more during a period of war;

(2) during a period of war and was discharged or released from such service for a service-connected disability;

(3) for a period of ninety consecutive days or more and such period began or ended during a period of war; or

(4) for an aggregate of ninety days or more in two or more separate periods of service during more than one period of war.

(i)(1) The Administrator shall provide that, for the purpose of determining whether or not a veteran is permanently and totally disabled, ratings for service-connected disabilities may be combined with ratings for non-service-connected disabilities.

(2) Where a veteran is found to be entitled under this section to improved pension and is also entitled to compensation for a service-connected disability, the Administrator shall pay such veteran only the greater benefit.

(3) Where a veteran is found to be entitled under this section to improved pension on the basis of such veteran's own service and is also entitled to improved pension on the basis of any other person's service, the Administrator shall pay such veteran only the greater benefit.

(j) Notwithstanding subsections (b), (c), (d), (e), and (f) of this section, benefits under this section may be paid less frequently than monthly where the amount of the annual benefit would be less than 4 per centum of the maximum annual rate payable to a veteran under subsection (b) of this section.

§ 562. Improved pension for surviving spouses of veterans of a period of war

(a) The Administrator shall pay improved pension at the rate prescribed by this section to the surviving spouse of each veteran of a period of war who met the service requirements prescribed in section 561(h) of this title or who at the time of death was receiving (or entitled to receive) compensation or retirement pay for a service-connected disability.

(b)(1) If there is no child, or if no child is in the custody of the surviving spouse, improved pension shall be paid to the surviving spouse monthly at the annual rate of $2,172, reduced by the amount of the surviving spouse's annual income.

(2) If there is a surviving spouse who has custody of a child, improved pension shall be paid to the surviving spouse monthly at the annual rate of $2,868. If the surviving spouse has custody of two or more children, the annual improved pension rate shall be increased by $660 for each such child in excess of one. In each case, the rate payable shall be reduced by the amount of the surviving spouse's annual income and the annual income of such child or children.

(c)(1)(A) If there is no child, or if the surviving spouse does not have custody of a child, and the surviving spouse is permanently and totally disabled from disability not the result of the surviving spouse's willful misconduct, improved pension shall be paid to such surviving spouse monthly at the annual rate of $3,240, reduced by the amount of such surviving spouse's annual income.

(B) If such surviving spouse has custody of one or more children, improved pension shall be paid to the surviving spouse monthly at the annual rate of $4,284, increased by $660 for each child in excess of one, and reduced by the amount of the surviving spouse's annual income and the annual income of such child or children.

(2) If there is a surviving spouse and (A) the surviving spouse has custody of a child six years of age or under, or (B) there is residing with the surviving spouse a child who, before attaining the age of eighteen years, became permanently incapable of self-support and

depends upon the surviving spouse for over one-half of such child's support, improved pension shall be paid to such surviving spouse monthly at the annual rate of $4,284. If such surviving spouse has custody of one or more additional children, or if there is residing with the surviving spouse one or more additional children who so became permanently incapable of self-support and depend to such extent upon the surviving spouse for support, the annual improved pension rate shall be increased by $660 for each such additional child. In each case, the rate payable shall be reduced by the amount of the surviving spouse's annual income and the annual income of such child or children.

(d)(1) If a surviving spouse who is entitled to improved pension under subsection (c)(1)(A) of this section is in need of regular aid and attendance, the annual rate of improved pension payable monthly to the surviving spouse thereunder shall be $5,340, reduced by the amount of the surviving spouse's annual income.

(2) If a surviving spouse who is entitled to improved pension under subsection (c)(1)(B) of this section is in need of regular aid and attendance, the annual rate of improved pension payable monthly to the surviving spouse thereunder shall be $6,384. If there are two or more children in such surviving spouse's custody, the annual improved pension rate shall be increased by $660 for each such child in excess of one. In each case, the rate payable shall be reduced by the amount of the surviving spouse's annual income and the annual income of child or children in the custody of the surviving spouse.

(e) No improved pension shall be paid to a surviving spouse of a veteran under this section unless the spouse was married to the veteran—

(1) before (A) March 4, 1917, in the case of a surviving spouse of an Indian war veteran, (B) January 1, 1938, in the case of a surviving spouse of a Spanish-American War veteran, (C) December 14, 1944, in the case of a surviving spouse of a Mexican border period or World War I veteran, (D) January 1, 1957, in the case of a surviving spouse of a World War II veteran, (E) February 1, 1965, in the case of a surviving spouse of a Korean conflict veteran, or (F) May 8, 1985, in the case of a surviving spouse of a Vietnam era veteran;

(2) for one year or more; or

(3) for any period of time if a child was born of the marriage, or was born to them before the marriage.

(f) Notwithstanding subsections (b), (c), and (d) of this section, benefits under this section may be paid less frequently than monthly where the amount of the annual benefit would be less than 4 per centum of the maximum annual rate payable to a veteran under section 561(b) of this title.

§ 563. Improved pension for surviving children of veterans of a period of war

(a) The Administrator shall pay to each surviving child, who is not in the custody of a surviving spouse eligible for improved pension under section 562 of this title and who is not a child described in section 562(c)(2)(B) of this title for whom a surviving spouse is receiving increased improved pension, of each veteran of a period of

war who met the service requirements prescribed in section 561(h) of this title, or who at the time of death was receiving (or entitled to receive) compensation or retirement pay for a service-connected disability, improved pension monthly (1) at the annual rate of $660, reduced by the amount of such child's annual income, or (2) if such child is residing with a person or persons legally responsible for such child's support under the laws of the State in which such child resides, at an annual rate equal to the amount by which the appropriate annual rate provided under section 562 of this title exceeds the annual income of such child and such person or persons, but in no event exceeding the amount by which $660 exceeds the annual income of such child. The appropriate annual rate under such section shall be determined in accordance with regulations which the Administrator shall prescribe, and the income of such child and such person or persons shall be determined in accordance with the provisions of section 564 of this title.

(b) Notwithstanding subsection (a) of this section, benefits under this section may be paid less frequently than monthly where the amount of the annual benefit would be less than 4 per centum of the maximum annual rate payable to a veteran under section 561(b) of this title.

§ 564. Determinations with respect to annual income; income exclusions

(a) In determining annual income under this subchapter, all payments of any kind or from any source (including such salary, retirement or annuity payments, or similar income as has been waived, irrespective of whether the waiver was made pursuant to statute, contract, or otherwise; but not including improved pension benefits under this subchapter) shall be included except for—

(1) donations from public or private relief or welfare organizations;

(2) amounts equal to amounts paid by a spouse for the expenses of a veteran's last illness, and by a surviving spouse or child of a deceased veteran for—

(A) the veteran's just debts,

(B) the expenses of the veteran's last illness, and

(C) the expenses of the veteran's burial to the extent that such expenses are not reimbursed under chapter 23 of this title;

(3) amounts equal to amounts paid—

(A) by a veteran for the last illness and burial of the veteran's deceased spouse or child, or

(B) by a spouse of a living veteran or the surviving spouse of a deceased veteran for the last illness and burial of a child of such veteran;

(4) proceeds of fire insurance policies;

(5) profit realized from the disposition of real or personal property other than in the course of a business;

(6) amounts in joint accounts in banks and similar institutions acquired by reason of death of the other joint owner;

(7) (A) except as provided in subclause (B) of this clause, $780, plus one-half of the amount which exceeds $780, of (i) the current-

work income of the veteran and the veteran's spouse and, subject to the exclusions set forth in subclause (C) of this clause, of any child or children for whom the veteran is receiving increased improved pension under section 561 (c), (d), (e), or (f) of this title, (ii) the current-work income of the surviving spouse and, subject to the exclusions set forth in subclause (C) of this clause, of any child or children for whom the surviving spouse is receiving increased improved pension under section 562 (b), (c), or (d) of this title, or (iii) subject to the exclusions set forth in subclause (C) of this clause, the current-work income of each surviving child receiving improved pension under section 563 of this title;

(B) in the case of a veteran or surviving spouse in need of regular aid and attendance, $1,560, plus one-half of the amount which exceeds $1,560, of (i) the current-work income of the veteran and the veteran's spouse and, subject to the exclusions set forth in subclause (C) of this clause, of any child or children for whom the veteran is receiving increased improved pension under section 561 (c), (d), (e), or (f) of this title, or (ii) the current-work income of the surviving spouse and, subject to the exclusions set forth in subclause (C) of this clause, of any child or children for whom the surviving spouse is receiving increased improved pension under section 562(d)(2) of this title; and

(C)(i) any current-work income of any child, including any surviving child, so long as such child is not required, by virtue of the amount of such income, to file an income tax return under the provisions of section 6012(a)(1)(A)(i) of the Internal Revenue Code of 1954 (26 U.S.C. 6012(a)(1)(A)(i)), to the extent that such current-work income does not exceed the amount specified in such section; and

(ii) any current-work income of any child, including any surviving child, who is pursuing a postsecondary course of education or vocational rehabilitation or training, to the extent of amounts paid by such child in the previous calendar year for such course of education or vocational rehabilitation or training, including amounts paid for tuition, fees, books, and materials;

(8) amounts equal to amounts paid in the previous calendar year by the veteran, the veteran's spouse, the surviving spouse, or by or on behalf of the surviving child or children for unreimbursed medical expenses to the extent that—

(A) such amounts exceed the lesser of—

(i) $100, or

(ii) 5 percent of the annual income of the veteran, the surviving spouse, or the surviving child or children (including the income of any person or persons with whom such child is residing if such person or persons are legally responsible for such child's support under the laws of the State in which such child resides), as the case may be, and

(B) the Administrator determines, under regulations which the Administrator shall prescribe, that such expenses were reasonably necessary for the health needs of—

(i) the veteran,

(ii) the veterans' spouse or children for whom the veteran is receiving increased improved pension under section 561 (c), (d), (e), or (f) of this title,

(iii) the surviving spouse,

(iv) any child or children for whom the surviving spouse is receiving increased improved pension under section 562 (b), (c), or (d) of this title, or

(v) the surving child or children;

but, if the Administrator has determined that adequate health-care services of the same kind as those for which an exclusion had been granted in a previous year were readily available at a facility operated by the Veterans' Administration, expenses for health-care services incurred more than thirty days after the Administrator has notified the veteran, surviving spouse, or surviving child or children, as appropriate, of the Administrator's determination shall not be taken into consideration in determining the amount excludable under this clause if the Administrator further determines that adequate health-care services of the same kind continued to be so available during the period in which such expenses were incurred;

(9) in the case of a veteran or surviving spouse in need of regular aid and attendance, amounts equal to amounts paid in the previous calendar year by such veteran or surviving spouse for unreimbursed expenses incurred for travel to and from such veteran's or surviving spouse's place of employment, to the extent that such amounts exceed the reasonable expenses which would have been incurred by a nondisabled person using an appropriate means of transportation (public transportation if reasonably available) for such travel; and

(10) in the case of a veteran or surviving spouse pursuing a course of education or vocational rehabilitation or training, amounts equal to amounts paid in the previous calendar year by such veteran or surviving spouse for such course of education or vocational rehabilitation or training, including amounts paid for tuition, fees, books, and materials, and in the case of a veteran or surviving spouse in need of regular aid and attendance, amounts paid for unusual transportation expenses (determined in the same manner as in clause (9) of this subsection).

(b)(1) Before applying any of the exclusions from annual income provided for under clause (7) of subsection (a) of this section, the Administrator shall apply, first to income other than current-work income and next to current-work income, all of the exclusions from annual income provided for under clauses (1) through (6) and (8) through (10) of such subsection.

(2) In the case of a child, including a surviving child, the Administrator shall apply the exclusions from annual income provided for under subsection (a)(7)(C) of this section before applying any exclusion provided for under subsection (a)(7)(A) or (B), as the case may be, of this section.

(3) The exclusions from annual income which are provided for in clause (7) of subsection (a) of this section shall apply to all current-work income not otherwise excluded under this section.

(c) A veteran shall be considered as living with a spouse, even though they reside apart, unless they are estranged.

(d) Where a fraction of a dollar is involved, annual income shall be fixed at the next lower dollar amount.

(e) As used in this section, the term "current-work income" means any income which is earned income within the meaning of section 401 (c) (2) (A) and section 911 (b) of the Internal Revenue Code of 1954 (26 U.S.C. 401 (c) (2) (A) and 911 (b)).

§ 565. Net worth limitation

(a) The Administrator shall deny or discontinue payment of improved pension to a veteran under section 561 of this title when the corpus of the estate or estates of the veteran, the veteran's spouse, if increased any, and any child or children for whom the veteran is receiving improved pension under subsection (c), (d), (e), or (f) of section 561 of this title, is such that under all the circumstances, including consideration of the veteran's income, it is reasonable that some part of the corpus of such estate or estates be consumed for the veteran's maintenance, excluding from the corpus of the estate of such child or children reasonable amounts set aside for educational or other similarly worthwhile vocational purposes for the benefit of such child or children.

(b) The Administrator shall deny or discontinue payment of improved pension to a surviving spouse under section 562 of this title when the corpus of the estate or estates of the surviving spouse and any child or children for whom the surviving spouse is receiving increased improved pension under subsection (b), (c), or (d) of section 562 of this title, is such that under all the circumstances, including consideration of the surviving spouse's income, it is reasonable that some part of the corpus of such estate or estates be consumed for the surviving spouse's maintenance, excluding from the corpus of the estate of such child or children reasonable amounts set aside for educational or similarly worthwhile vocational purposes for the benefit of such child or children.

(c) The Administrator shall deny or discontinue payment of improved pension to a surviving child under section 563 of this title when the corpus of the estate of the surviving child is such that under all the circumstances, including consideration of such child's income, the income of a person (or persons) with whom such child is residing who is legally responsible for such child's support under the laws of the State in which such child resides, and the corpus of the estate of such person (or persons), it is reasonable that some part of the corpus of such estate or estates be consumed for the surviving child's maintenance, excluding from the corpus of the estate of such child reasonable amounts set aside for educational or other similarly worthwhile vocational purposes for the benefit of such child.

§ 566. Election of improved pension benefits

Except as provided in section 508 of this title, any veteran receiving pension under section 521 of this title, any surviving spouse receiving pension under section 541 of this title, any child receiving pension under section 542 of this title, and any veteran, surviving spouse, or child receiving pension under section 9 (b) of the Veterans' Pension

Act of 1959 may elect at any time to receive improved pension under this subchapter in lieu of pension payable to such veteran, surviving spouse, or child under any such section. If at any time improved pension is paid pursuant to such an election, the election shall be irrevocable.

§ *567. Definitions*

For purposes of this subchapter—

(1) The term "child" means the veteran's child.

(2) The term "veteran" includes a person who has completed at least two years of honorable active military, naval, or air service, as certified by the Secretary concerned, but whose death in such service was not in line of duty.

Subchapter [IV] *V*—Army, Navy, Air Force, and Coast Guard Medal of Honor Roll

§ [560] *571*. Medal of Honor Roll; persons eligible

(a) There shall be in the Department of the Army, the Department of the Navy, the Department of the Air Force, and the Department of Transportation, respectively, a roll designated as the "Army, Navy, Air Force, and Coast Guard Medal of Honor Roll."

(b) Upon written application to the Secretary concerned, the Secretary shall enter and record on such roll the name of each surviving person who has served on active duty in the armed forces of the United States and who has been awarded a medal of honor for distinguishing such person conspicuously by gallantry and intrepidity at the risk of such person's life above and beyond the call of duty while so serving.

(c) Applications for entry on such roll shall be made in the form and under regulations prescribed by the Secretary concerned, and shall indicate whether or not the applicant desires to receive the special pension provided by section [562] *573* of this title. Proper blanks and instructions shall be furnished by the Secretary concerned, without charge upon the request of any person claiming the benefits of this subchapter.

§ [561] *572*. Certificate

(a) The Secretary concerned shall determine whether or not each applicant is entitled to have such person's name entered on the Army, Navy, Air Force, and Coast Guard Medal of Honor Roll. If the official award of the Medal of Honor to the applicant, or the official notice to such person thereof, shows that the Medal of Honor was awarded to the applicant for an act described in section [560] *571* of this title, such award or notice shall be sufficient to entitle the applicant to have such person's name entered on such roll without further investigation; otherwise all official correspondence, orders, reports, recommendations, requests, and other evidence on file in any public office or department shall be considered.

(b) Each person whose name is entered on the Army, Navy, Air Force, and Coast Guard Medal of Honor Roll shall be furnished a certificate of service and of the act of heroism, gallantry, bravery,

or intrepidity for which the Medal of Honor was awarded, of enrollment on such roll, and, if such person has indicated such person's desire to receive the special pension provided by section [562] *573* of this title, of such person's right to such special pension.

(c) The Secretary concerned shall deliver to the Administrator a certified copy of each certificate issued under subsection (b) in which the right of the person named in the certificate to the special pension provided by section [562] *573* of this title is set forth. Such copy shall authorize the Administrator to pay such pension to the person named in the certificate.

§ [562] *573*. Special provisions relating to pension

(a) The Administrator shall pay monthly to each person whose name has been entered on the Army, Navy, Air Force, and Coast Guard Medal of Honor Roll, and a copy of whose certificate has been delivered to the Administrator under subsection (c) of section [561] *572* of this title, a special pension at the rate of $100, beginning as of the date of application therefor under section [560] *571* of this title.

(b) The receipt of special pension shall not deprive any person of any other pension or other benefit, right, or privilege to which such person is or may hereafter be entitled under any existing or subsequent law. Special pension shall be paid in addition to all other payments under laws of the United States.

(c) Special pension shall not be subject to any attachment, execution, levy, tax lien, or detention under any process whatever.

(d) If any person has been awarded more than one medal of honor, such person shall not receive more than one special pension.

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PART IV—GENERAL ADMINISTRATIVE PROVISIONS

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CHAPTER 51—APPLICATIONS, EFFECTIVE DATES, AND PAYMENTS

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Subchapter II—Effective Dates

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§ 3012. Effective dates of reductions and discontinuances

(a) Except as otherwise specified in this section, the effective date of reduction or discontinuance of compensation, dependency and indemnity compensation, or pension shall be fixed in accordance with the facts found.

(b) The effective date of a reduction or discontinuance of compensation, dependency and indemnity compensation, or pension—

(1) by reason of marriage or remarriage, or death of a payee shall be the last day of the month before such marriage, remarriage, or death occurs;

(2) by reason of marriage, annulment, divorce, or death of a dependent of a payee shall be the last day of the calendar year in which such marriage, annulment, divorce, or death occurs;

(3) by reason of receipt of active service pay or retirement pay shall be the day before the date such pay began;

(4) by reason of change in income or corpus of estate shall be the last day of the calendar year in which the change [occurred;] *occurred, except that such effective date shall be the last day of the month in which the change occurred for persons receiving payments under section 416, 561, 562, or 563 of this title;*

(5) by reason of a change in disability or employability of a veteran in receipt of pension shall be the last day of the month in which discontinuance of the award is approved;

(6) by reason of change in law or administrative issue, change in interpretation of a law or administrative issue, or, for compensation purposes, a change in service-connected or employability status or change in physical condition shall be the last day of the month following sixty days from the date of notice to the payee (at his last address of record) of the reduction or discontinuance;

(7) by reason of the discontinuance of school attendance of a payee or a dependent of a payee shall be the last day of the month in which such discontinuance occurred;

(8) by reason of termination of a temporary increase in compensation for hospitalization or treatment shall be the last day of the month in which the hospital discharge or termination of treatment occurred, whichever is earlier;

(9) by reason of an erroneous award based on an act of commission or omission by the beneficiary, or with the beneficiary's knowledge, shall be the effective date of the award; and

(10) by reason of an erroneous award based solely on administrative error or error in judgment shall be the date of last payment.

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CHAPTER 53—SPECIAL PROVISIONS RELATING TO BENEFITS

Sec.

3101. Nonassignability and exempt status of benefits.
3102. Waiver of recovery of claims by the United States.
3103. Certain bars to benefits.
3104. Prohibition against duplication of benefits.
3105. Waiver of retired pay.
3106. Renouncement of right to benefits.
3107. Apportionment of benefits.
3108. Withholding benefits of persons in territory of the enemy.
3109. Payment of certain withheld benefits.
3110. Payment of benefits for month of death.
3111. Prohibition of certain benefit payments.
3112. Annual adjustment of certain benefit rates and income exclusions.

* * * * * * *

§ 3111. Prohibition of certain benefit payments

There shall be no payment of dependency and indemnity compensation, death compensation, or death pension which, because of a widow's

relationship with another man before enactment of Public Law 87–674, would not have been payable by the Veterans' Administration under the standard for determining remarriage applied by that agency before said enactment.

§ 3112. *Annual adjustment of certain benefit rates and income exclusions*

(a) Whenever, in any calendar year after 1978, benefit payments under title II of the Social Security Act are increased by a percentage effective with any month as a result of a determination made under section 215(i) of such Act, each of the dollar amounts in effect for such month for benefits payable under sections 416, 561, 562, and 563 of this title and each of the dollar amounts shown in subsection (h)(1)(G) of section 416 and subsection (a)(7) of section 564 of this title, as specified in such sections or subsections or as previously increased under this section, shall be increased by the same percentage (and rounded in such manner as the Administrator deems equitable and appropriate), effective beginning with benefits payable for such month; and such dollar amounts so increased shall be pubished in the Federal Register at the same time as the material required by section 215(i)(2)(D) of the Social Security Act to be published therein by reason of a determination under such section 215(i).

(b) Notwithstanding any other provision of law, whenever benefit rates payable under sections 416, 561, 562, and 563 of this title are adjusted in accordance with subsection (a) of this section, the Administrator shall recompute the amount of annual improved pension payable to each veteran, surviving spouse, and surviving child, and the amount of annual improved dependency and indemnity compensation payable to each surviving parent, who is also entitled to receive payments under any other Federal program or programs, the rates of which are adjusted as a result of a determination made under section 215(i) of the Social Security Act. Any recomputation shall be made on the basis of the annual rate of payments payable to a veteran, surviving spouse, surviving child, or surviving parent under such other Federal program or programs, as increased as a result of the determination made under section 215(i) of the Social Security Act; and the benefit rates recomputed under this subsection shall become effective beginning with the first month in which both the increase in benefit rates payable under sections 416, 561, 562, and 563 of this title and the increase in payments under such other Federal program or programs are effective.

CHAPTER 55—MINORS, INCOMPETENTS, AND OTHER WARDS

* * * * * * *

§ 3203. Hospitalized veterans and estates of incompetent institutionalized veterans

[(a)(1) Where any veteran having neither wife nor child is being furnished hospital treatment, institutional, or domiciliary care by the Veterans' Administration, no pension in excess of $50 per month shall be paid to or for the veteran for any period after (a) the end of the second full calendar month following the month of admission for

treatment or care or (b) readmission for treatment or care within six months following termination of a period of treatment or care of not less than two full calendar months.]

(a)(1)(A) Where any veteran having neither spouse nor child is being furnished domiciliary care by the Veterans' Administration, no pension in excess of $60 per month shall be paid to or for the veteran for any period after the end of the second full calendar month following the month of admission for such care.

(B) Where any veteran having neither spouse nor child is being furnished hospital or nursing home care by the Veterans' Administration, no pension in excess of $60 per month shall be paid to or for the veteran for any period after (i) the end of the third full calendar month following the month of admission for such care, or (ii) the end of the sixth full calendar month following the month of admission for care in any case in which the Administrator finds that the receipt of pension benefits (to which the veteran is otherwise entitled) for three additional months will reasonably facilitate such veteran's ability to return to the community.

(C) No pension in excess of $60 per month shall be paid to or for a veteran having neither spouse nor child for any period after the month in which such veteran is readmitted for care described in subparagraph (A) or (B) of this paragraph and furnished by the Veterans' Administration if such veteran is readmitted within six months of a period of care of not less than two full calendar months.

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APPENDIXES

Appendix A—Chapter V, "Pensions", An Excerpt From "Veterans Benefits in the United States", A Report to the President by the President's Commission on Veterans' Pensions, April 1956

CHAPTER V

PENSIONS

NATURE OF PENSIONS

A veteran's pension is presently defined as a regular allowance made by the Federal Government to one who has been in its military service, or to his widow or dependent relatives, but who suffered neither disability nor death during or as a result of his military service (Public 494, 79th Cong.). A pension is thus differentiated from compensation which is paid to those who suffered disability during or as a result of their military service, or to the widow or dependent relatives of one who died during or as a result of his military service. Pensions have been granted solely on the basis of service of a specified length of time; they have also been granted on the basis of some specified service plus other qualifications such as indigence, inability to perform manual labor, inability to earn a support, disability in some degree incurred after the termination of the war, the attainment of a certain age, or various combinations of all these elements.

Ordinarily, a pension is neither provided nor promised at the time the war is being fought and young men and women are being taken into the Armed Forces, but is enacted years later when the veteran population is advanced in age and reduced in numbers. (Historically, as will be shown shortly, the period between the termination of the war and the enactment of pension legislation has become progressively shorter.) This differentiates between pension and compensation, since compensation laws are always enacted during the period of the war and thus become part of the enlistment contract, or in case of a draft, part of the draft agreement. Legally, of course, Congress may withdraw or reduce compensation, or any other benefit.

A pension is essentially a rear-guard or a backward-looking device. It is enacted as a delayed afterthought many years after the war is over for the purpose of relieving distress from disability or destitution among the aging veteran population. It has been used to show the Nation's gratitude for services performed many years before. In the period prior to World War I during which pensions became firmly established as part of the pattern for treatment of the veterans of our wars, there was no source from which aging veterans could draw aid in the absence of pension provisions other than private charity. Legislators were wont to look with horror upon the prospect of the aging veteran being forced to rely upon private charity during his time of want.

It is the purpose of the next few pages to examine major military pension enactments to determine conditions under which they were enacted, what the provisions were, and what were the results or outcomes of some of the legislation.

Pension history in the United States starts with the Revolutionary War; prior to that time, colonial provisions for veterans had taken the form of compensation only. Pension history of the Revolutionary War consists of two parts. One of these, the struggle of Revolutionary War officers to obtain, while the war was going on, the promise of pensions of half pay for life was only a passing incident and established no precedent although it did cause much difficulty for the Continental Congress and much furor among the population. The other part, which established the precedent for the pension system, started with the limited service pension legislation of 1818 together with amendatory and liberalizing acts which followed.

Half pay for Revolutionary officers

The demand on the part of Revolutionary officers for a pension of half pay for life grew out of British precedent and out of the conditions under which the war was being fought. General Washington and many of the officers who served under him were aware that officers of the British Army were retired on half pay for life after their service was over. This they considered sufficient precedent for their demand.

From General Washington's standpoint, however, he needed inducements which would help hold his army together, or which would at least hold his officers faithful to their duty. The officers' pay was low, the fiat money issued by Congress with which the men were paid was practically worthless, inflation was taking its toll of what money was available, clothing and other supplies were practically nonexistent, and as a result the officers were suffering from privation and want. From the political standpoint, enthusiasm for the war was considerably less than universal and many men, both commissioned officers and otherwise, heartily wished themselves well out of it. Many officers resigned their commissions, and many others applied for permission to resign. This disaffection among his officers was destroying what little army Washington had under his command, and he sought desperately for something with which to hold it together. The device which presented itself was the half-pay service pension for life.[1]

There was much opposition, both in and out of Congress, to the passage of such legislation. Opposition was based upon several ideas: (1) It would place such a heavy financial burden on the Colonies that they could not bear it; (2) it was an undemocratic precedent for the country; (3) it would render the pensioners themselves in a great measure useless to their country; (4) it was unjust because it was not a matter of contract; (5) it was wrung from an unwilling Congress by what amounted to blackmail, and would not be supported when it came into effect. Pressure upon Congress of the fear that the Army would collapse became so great, however, that a measure was passed on May 15, 1778, providing officers who should serve through the war with half pay for a period of 7 years. On October 21, 1780, the period was extended to life rather than 7 years. On March 22, 1783, the

[1] The record of this episode in pension history can be found in the following: W. C. Ford, Journals of the Continental Congress; American State Papers; L. C. Hatch, The Administration of the American Revolutionary Army; W. C. Ford, The Writings of Washington; and extensive discussions can be found in William H. Glasson, History of Military Pension Legislation in the United States and Federal Military Pensions in the United States.

Congress adopted a measure known as the Commutation Act, which provided instead of the half pay for life, a payment of 5 years' full pay in money or in securities bearing interest at 6 percent per annum, as the Congress should find more convenient.

The payment of the commuted pension caused difficulty also. The Continental Congress had no money with which to pay, so "commutation certificates" payable to bearer and bearing interest at 6 percent were issued. Intense opposition to the payment of the commutation certificates arose in the New England area, especially in Connecticut, but also appeared in Delaware, New York, and other States. The basis of the opposition was that the people were unwilling to submit to taxing power which would be used to further the establishment of a moneyed, privileged class within the United States. The Society of the Cincinnati, formed by the officers to aid them in obtaining their commutation pay, was the focus of much of the opposition. The New England States were ultrademocratic and on this basis also, opposed the establishment of a special class among the officers.

No provision had been made for paying either the interest or the principal of the commutation certificates, and since the Continental Congress had no money with which to pay, the certificates soon deteriorated in value. Many of the holders sold their certificates for a small fraction of their value. Thus a major portion of the approximately $5 million involved came into the hands of speculators when the certificates were later redeemed, and never reached the veterans at all.

The half pay for officers issue caused such upheavals because of several factors: (1) It was out of line with colonial precedent; (2) it discriminated against enlisted men in favor of officers and thus offended the democratic feelings of many New Englanders; (3) it was proposed during and immediately after the war when many people were concerned with the cost of the war; (4) unstable relationships between the States and the Congress also contributed to the difficulties; (5) the mass of the population took a tremendous interest and a firm stand either in favor of or against the proposition. There has not been any similar proposal advanced during a war since that time.

Revolutionary War pensions

With the exception of the half pay for officers just discussed, all other payments to veterans of the Revolution, prior to 1818, with the exception of certain small bounties paid at the end of the war, were for compensation for the war-disabled.[2]

By 1818, however, the War of 1812 was behind, 35 years had passed since the mustering out of the Revolutionary Army, import duties and sales of public land were bringing large amounts of money into the Treasury, the country was prosperous ,and the feeling seems to have arisen that something ought to be done for Revolutionary War veterans who were in indigence and distress. President Monroe sponsored such a move by his recommendations in his message to Congress

[2] This summary of Revolutionary War pensions, and also pensions for veterans of the War of 1812, the Mexican War, and the Indian wars is based upon: William H. Glasson, History of Military Pension Legislation in the United States, and Federal Military Pensions in the United States; Gustavus A. Weber and Laurence F. Schmeckebier, The Veterans' Administration; William P. Dillingham, Federal Aid to Veterans, 1917–41; and Reports of the Veterans' Administration.

in December 1817. The belief was expressed that there were only a few of these aged veterans still living and that the financial expense would be nominal.

The feeling in Congress, as shown by the extended debates which took place, was far from unanimous. There seemed to be a general feeling that some relief should be afforded the old veterans, but there was lack of agreement as to what course this should take. Some wished for a service pension based purely upon a minimum of service while others favored a provision based upon "service and poverty." No one knew, and seemingly no one was able to estimate with any degree of accuracy, the number of veterans who would be eligible under such a law. All estimates proved totally inadequate and ridiculously small in view of later developments. One such estimate was less than 1900, but over 18,000 applied. This underestimate was typical of later enactments.

Supporters of the measure pointed complacently to the surplus in the Treasury as evidence that the country could well afford to help the veterans. The burden of their argument was eulogy of the Revolutionary soldiers, praise of their services, descriptions of the privations they had undergone, and an appeal to the gratitude of the country. Actually, veterans of the Revolutionary War did serve under conditions of extreme physical hardship. Their pay was small and in relatively worthless currency. Food, clothing, and medical care were poor or nonexistent. Probably more than veterans of subsequent wars, the veterans of the Revolution inspired feelings of sympathy and of the desire to further reward long and arduous service. Those who opposed the act pointed out that sentiment was a miserable guide for a legislator. Furthermore, a precedent was being established which would eventually cost the country vast sums of money. In this the Speaker, who in that instance was Senator Smith of South Carolina, was correct. Pension laws, more or less similar in nature, have been passed for the benefit of veterans of all subsequent wars, including veterans of World War II and of Korea.

The law of 1818 (3 Stat. 410) provided pensions, with certain restrictions, on the basis of service and need. The rate for officers was $20 a month while that for others was $8. The statute prescribed no method of proof of the claimant's need for assistance, but the regulations of the War Department required his oath and the certificate of the judge before whom his evidence in support of the claim was taken. Such a method of proof opened the door to flagrant abuse and fraud. Men of means were charged with having made themselves out to be paupers in order to receive the benefits of the law. A wave of indignation swept over the country at these abuses. Much of the opposition was centered again in Connecticut, where the opposition to commutation had been so strong. The opposition to the law was strengthened by the fact that in 1819 there was a severe business crisis followed by 3 years of depression.

With the Government forced to borrow large sums of money in order to meet its operating expenses in 1820 and 1821, pressure developed in favor of accomplishing savings through the reduction of pensions. Although Members of Congress felt they were walking on ticklish political grounds in talking about reducing pensions, there was some movement in that direction. A congressional investigation in 1820 resulted in the removal of upward of 6,000 names from the rolls.

This was brought about by the use of stricter standards by which the claimant must prove that he was in need of the aid. By advice of the Attorney General, the Secretary of War held that he had no power to replace on the rolls the names of persons who had been removed because they failed to meet the income requirements, but later because of a decline in their circumstances, became eligible for pension.

By 1822 the financial conditions of the Treasury had been improved, so liberality in the pension field was restored. In 1820, there were some 21,000 names on the rolls. In September 1822, there were approximately 14,500, which number had increased to 17,500 by November 1823, and expenditures in that year amounted to approximately $1,650,000. Continued increases soon carried the list above its previous high point. Thus, the first attempt at economy in pensions ended in failure as another one 113 years later was also destined to end. It seems likely that, in view of the depression of 1820 and 1821, many of the people who had previously fraudulently established eligibility for pensions actually became eligible because of reduced circumstances but because they had been removed from the rolls as ineligible, they could not then be returned to the rolls again.

Continued petitions by Revolutionary War veterans for pensions brought about the passage, in 1828, of legislation to place on the pension rolls at full military pay for life, all officers who had been eligible to receive commutation certificates in 1783. Continued agitation by this group over the years had done much to stimulate interest in pensions. Full pay for life was also given to the noncommissioned officers and soldiers who enlisted for the war and served until its end, and thereby became entitled to receive the reward of $80 promised by the resolution of May 15, 1778. Because so many enlistments were for short durations and few men served until the war's end, those who received this pension probably never exceeded 1,200 in number.

One other major liberalization took place in pensions for Revolutionary War veterans. Starting in 1830, a movement gathered momentum to expand the pension rolls. The Treasury was overflowing with money and the national debt was rapidly being extinguished.[3] The Treasury surplus was beginning to create difficulty and the idea seems to have occurred to many simultaneously that a good means of disposal of this would be to give it to veterans in additional pensions. President Jackson advocated this in his annual message of December 1829, and Congress was not long in introducing legislation to carry out the suggestion.

The same arguments used in support of the act of 1818 were repeated with only minor variations. The estimate in this instance was that there could be no more than 10,000 Revolutionary soldiers living who would come under the terms of the measure; that the cost would not be more than $450,000 a year, and that even that would disappear within 5 years. These estimates were strongly supported by those who advanced them. The number of applicants under the law which was passed subsequently exceeded 32,000. As had happened previously, and was to happen many times in the future, the estimates were grossly inadequate.[4]

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[3] The only period when the Federal Government was not in debt was for a few months at the end of 1835 and the start of 1836.

[4] Glasson, op. cit., pp. 80–83.

Opposition to extension of pension laws came largely from the South and the West. In addition to the philosophical arguments which had been used previously, southern opponents came up with the contention that there was a direct and unholy alliance between the advocates of increased pensions and the advocates of the protective tariff. By beggaring the Treasury through increased pensions, the possibility of tariff reduction would be eliminated. The South, being mainly agricultural and depending upon export markets to dispose of much of its output, felt that the relationship between pensions and tariffs was very clear. This was denied, of course, by the proponents of enlarged pensions.

Opponents were able to postpone the passage of the act for 2 years, but in 1832 a service pension became law (4 Stat. 529). The act extended the full pay for life provisions of the act of 1828 to all survivors of the war who had completed a total of 2 years of service, whether in the Continental Army or in State troops, volunteers, militia, or in the Navy. The long period of service required for full pension indicates a desire to reward long service rather than the mere fact of service in the Armed Forces. Pension was not to exceed the full pay of a captain. Those who had completed less than 2 years of service were entitled to a pension proportioned according to their length of service, but pension could not be paid for less than 6 months of time in the Armed Forces.

The laws were loosely written and made fraud easy to perpetrate. The only thing necessary to prove was length of service. Records of enlistment and service in the State troops, the militia, or the volunteers were generally nonexistent, so service had to be established by other means. Reliance was had on the sworn declarations of the claimant and his witnesses, and much importance was attached to traditional evidence, such as a general belief in the neighborhood that the claimant had been a Revolutionary soldier. Such a tradition might be supported by the evidence of the nearest clergyman and of other persons of character and standing in the community. There is no way of determining what portion of the allowed claims were fraudulent.[5]

The new scramble for pensions caused thoughtful men to question the moral and political effect of the whole pension system in the United States. This became even sharper as widespread frauds under the system were revealed by the report of the Commissioner of Pensions in 1834. Over 51 years after the end of the war, there were 40,000 pensioners on the roll. That a significant number of them were fraudulent cannot be denied. The question was raised whether the practical effects of the system had not been to discourage private industry and to lead a large portion of the people of the United States to look at the Treasury as the unfailing spring from which they were to receive every good. The same question has been raised many times during the pension history of the United States and is no less pointed at the present time than when first raised.

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[5] The House Committee on Revolutionary Pensions in 1834 reported four classes of frauds under the 1832 law: (1) Claims asserted in the names of actual Revolutionary soldiers who were dead; (2) claims in the names of persons not on the Revolutionary Army rolls, and where no such person existed at the time the declarations purported to have been made; (3) cases where the pensioners died after the pensions were granted, and their allowances were drawn by false vouchers; (4) overstatement of the services of claimants in their declarations and in the testimony supporting them.

There were no further enactments of significance with regard to pensions for Revolutionary War veterans except for minor liberalizations. The last veteran pensioner of the Revolution died in 1867—84 years after the termination of the struggle.

Dependents' pensions

One other item remains to complete the picture of the Revolutionary War pensions: this is pensions for dependents of decreased veterans. The first of a long series of acts for this purpose came in 1836 (5 Stat. L. 127). It provided that if any Revolutionary soldier, who would have been entitled to a pension under the act of June 7, 1832, had died, leaving a widow whose marriage took place before the expiration of his last period of service, such widow, so long as she remained unmarried, would be entitled to receive the pension which might have been allowed to her husband, if living at the time the act of 1832 was passed. This law pensioned about 5,000 widows who were wives of soldiers while the Revolutionary War was in progress.

For approximately 40 years after the act of 1836, there was a constant liberalization of the Revolutionary widows' pension laws. The general direction of the liberalization was to recognize widows of later and later marriages, until finally, widows who married veterans at any time were entitled to pensions. Another direction of liberalization was to grant pensions to widows of veterans with shorter service, until finally the widow of a veteran who served as much as 14 days or in any engagement was entitled to a pension. The last surviving widow of a Revolutionary War veteran died in 1906. Even this did not end the story since special pension acts had been passed granting pensions to the daughters of certain of these veterans. The last of these died in 1910.

Summary of Revolutionary War pensions

Because Revolutionary War pensions established precedents, showed patterns, and revealed possibilities for future development, it seems worthwhile to pause a moment to survey the results of this experience. The figures involved, both in terms of money and in terms of individuals, are infinitesimal in comparison with present totals. The amount expended came to approximately $66 million, divided between veterans approximately $46 million and widows approximately $20 million. The manner of keeping records during the early years of the Federal Government makes it impossible to state the exact number of Revolutionary soldiers who were granted compensation, and duplications make it difficult to determine exactly the number of individuals who received pensions. The Commissioner of Pensions reported that between 55,000 and 60,000 individual veterans received pensions, although duplications mentioned may mean that these are slightly overstated. The number of original soldiers' and sailors' claims allowed on account of the Revolutionary War is given as 52,504.

A century of Revolutionary War pension activity and legislation fell into a pattern which has often been repeated. First (apart from pension legislation) compensation was provided for the service-disabled. This was followed by some type of pension. In 1818, a precedent was established for service pensions to volunteer armies by the grant of such pensions to the indigent veterans of the Revolution. A more liberal law was passed in 1832 granting service pensions to

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Revolutionary soldiers regardless of income or property. The widows of Revolutionary veterans received pensions first under the law of 1836. As the number of veterans was decreased by death and the number of widows increased, the laws for the benefit of widows were from time to time made more liberal and more inclusive.

Glasson thought he found, as indeed he did, a pattern which pervaded much of later pension history. He concluded:[6]

> However, Revolutionary pension legislation was important for the precedents it established. In miniature, its history shows most of the conditions which surrounded the passage and administration of later pension laws. Conditions of Treasury surplus encouraged the enactment of expensive service-pension provisions, thereby making precedents immensely costly when applied to later wars * * *. As in later days, it was felt that the pensioners and their friends were a political force to be reckoned with. Loose and extravagant legislation brought frauds, public indignation, and attempts at reform. There was a widespread feeling that the pension system had an important influence in lowering the moral tone and lessening the independence of large numbers of citizens. In many cases pension frauds were discovered which involved criminal acts of a grave character on the part of persons who had been respected and trusted. There were indications that many more frauds were committed than came to light * * *. As a whole the experience of the country with the Revolutionary pension laws should have furnished much valuable guidance and warning in the framing and administration of Civil War pension laws, but, as a matter of fact, this early experience was practically ignored.

WAR OF 1812, MEXICAN WAR, AND INDIAN WAR PENSIONS

Pension legislation for the veterans and the dependents of veterans of those three wars followed the same pattern as pensions for Revolutionary War veterans, and no extended or detailed discussion of them is necessary.[7] Only the highlights will be touched upon to show how closely they conformed. Indeed, the earlier pattern was the precedent upon which the later laws were based.

War of 1812 pensions

Approximately 286,000 troops took part in the War of 1812, which terminated in 1815. Revolutionary War veterans had to wait only 35 years for their limited pension and 49 years for their full service pension. The veterans of the War of 1812 never received a limited pension and were forced to wait 56 years for their full service pension. The usual controversy between those who favored and those who opposed such a pension went on for some time in Congress.

The pension law for veterans of the War of 1812 as passed in 1871 (16 Stat. L. 411) required 60 days of service, honorable discharge, loyalty to the Union during the Civil War, and granted pensions at $8 a month. There was no income limitation. The number of potential pensioners was underestimated as usual. About 25,000 persons made claim as veterans.

The same law provided that the widow who had been married to the veteran prior to the treaty of peace and who had not remarried was eligible for the same pension as her former husband would have been had he been alive. This rate was $8 per month.

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[6] William H. Glassen, Federal Military Pensions in the United States, p. 96.

[7] See: William H. Glasson, Federal Military Pensions in the United States, pp. 108–119; and Gustavus A. Weber and Laurence F. Schmeckebier, The Veterans' Administration, pp. 30–39, for detailed discussions of this period in our pension history.

Almost immediately greater liberality was urged for both veterans and widows. This was achieved in 1878 (20 Stat. 27) when the time of service was reduced to 14 days or action in any one engagement; the requirement of loyalty to the Union during the Civil War was abandoned, and any limitation on the date of marriage as a requirement for eligibility for widow's pension was eliminated. The reduction to 14 days' service in the requirements for eligibility for pension shows the abandonment of the "long and arduous" service idea. The liberalization of 1878 was almost entirely for the benefit of widows since the ranks of the veterans of that war were being reduced very rapidly by death. The only further action taken on pensions for either veterans or dependents consisted of a steady upward revision of rates. Starting with the $8 per month originally provided, the rate finally reached $50 per month in 1926.

The last veteran of the War of 1812 died in 1905, 90 years after the end of the war. The last pensioner of the War of 1812, the daughter of a veteran, who was drawing a pension by special act died in 1947—132 years after the end of the war. Total disbursements amounted to slightly over $46 million, divided between veterans and dependents as follows: Veterans, $14 million; dependents, $32 million. These relatively small expenditures are accounted for by the long period which was allowed to elapse before service pension legislation was enacted.

Mexican War pensions

The Mexican War ended on May 30, 1848, with approximately 78,000 men seeing service. Pension legislation for veterans of the War of 1812 gave impetus to the pension movement for the veterans of the Mexican War, who were forced to wait only 39 years before receiving their service pension in 1887 (24 Stat. 371). The law required 60 days of service, an honorable discharge, and either an attained age of 62 or a disability equivalent sufficient to entitle the individual to a pension. The pension rate was $8 per month. This was a limited service pension; not a full pension and applied to widows. A veteran who incurred his disability while voluntarily engaged in opposing the United States Government during the Civil War was not eligible, but there was no requirement of loyalty during that war.

As with previous pension patterns, a constant liberalization of both rates and conditions of entitlement followed. Pensions for veterans were raised to $65 a month in 1926. The last veteran pensioner died in 1929, 81 years after the end of the war. Widows' pensions were increased in like manner, and on June 30, 1954, 10 were on the rolls at a rate of $52.50 per month.

Expenditures for pensions on account of the war with Mexico approximate $56 million. This was significantly larger than the expenditures on account of the War of 1812 although there were less than a third as many men involved in this war as in the other. At least part of the explanation of this lies in the fact because of earlier enactment of pension legislation, the veterans of the Mexican War enjoyed some 18 years more of pension benefits.

Indian wars pensions

The United States engaged in a series of wars, skirmishes, running engagements, and various other types of activities against hostile Indians over a period which ended shortly before the close of the 19th

century. In total many thousands of men took part in the Indian wars although many of the campaigns were very brief occupying no more than a few days or weeks. Pensions for the veterans of these wars were finally provided in 1892 (27 Stat. 281), but the act specified that the benefits should not apply to any Indian wars later than 1842. Thus, once again, the period of waiting was a long one.

The act, which included widows, required 30 days of service in specified Indian wars between 1832 and 1842, and an honorable discharge. Service could be proved by any satisfactory evidence, and loyalty during the Civil War was not required. The rate of pension was $8 per month during life.

Successive enactments included later Indian wars up to 1898. The rate of veteran pension was raised periodically and is now $101.59 or $135.45 if in need of aid and attendance. On March 31, 1955, there were 195 living veterans of the Indian wars on pension rolls, and the dependents of 1,298 veterans were receiving pensions at a rate of $40.64 a month for a widow under age 70, a rate of $54.18 a month for a widow 70 or more, and a rate of $67.73 a month for a widow who was the wife of the veteran during his service, with additional allowances in each case of $8.13 for each eligible child. Total expenditures to June 30, 1954, amounted to $102,276,266, almost evenly divided between veterans and dependents.

CIVIL WAR PENSIONS

The Civil War which ended in 1865 was a war of massed armies, with some 2,200,000 men enrolled in the Union Army, and figures quoted in congressional debate on pension measures for veterans of that war indicate that some 800,000 were disabled by wounds or disease.[8] Accordingly, numbers were much more important than in previous wars with respect to the amount of money involved, the number of individuals who would be covered, and also, on the political side, by the size of the soldier vote. Pension laws for Civil War veterans, thus, were much more significant than those for the benefit of veterans of the War of 1812, the Indian wars, or the Mexican War, all of which were passed within the same general period.

Part of the background for the first Civil War pension act grew out of the difficulty veterans experienced in substantiating their claims for compensation. Fifteen, twenty, or twenty-five years after the war, many veterans were completely disabled and unable to earn their own support from causes which they were convinced originated in the war. It was not possible, however, for them to prove any service connection. (The same set of circumstances was instrumental in producing pension legislation for World War I veterans in the form of disability allowance in 1930.) These disabled men, of whom there were several thousand, were existing in almshouses, jails, flophouses, and other similar institutions. There was an understandable desire to do something to aid these disabled, destitute survivors of the war, and to keep them from being public charges and from having to lean upon "the frigid bosom of public charity."

Another part of the background for the Dependent Pension Act lay in the existence and activities of two groups: The pension claims agents and the Grand Army of the Republic. This aspect of pension

[8] Congressional Record, v. 19, pt. 2, March 8, 1888, p. 1865.

history has been ably developed by Glasson [9] and more recently by Dearing.[10] Since it has been alluded to elsewhere in this report, it will not be pursued further here.

The law which was passed in 1890 after a decade or more of political jockeying and maneuvering was called the Dependent Pension Act of 1890 (26 Stat. L. 182). As the name would indicate, it was not a pure service pension since it contained the provision that to be eligible, the veteran must demonstrate himself unable to perform manual labor to an extent that would preclude his earning a living. Three lesser conditions also attended eligibility for this payment, viz, at least 90 days of military service during the Civil War, an honorable discharge, and a disability not the result of his own vicious habits which rendered the veteran incapacitated for manual labor. The pension rate varied from $6 to $12 a month depending upon the degree of inability on the part of the veteran to support himself.

Arguments on both sides were long and vicious, many sharp interchanges being recorded in the congressional debates. Those supporting the act contended (1) that the Government owed all it could pay within reason to these veterans; (2) that the surplus in the Treasury justified anything which could be done; (3) that the country had been niggardly in its treatment of veterans; and (4) that it would encourage volunteers in case of another war when dependence would have to be had on the volunteer soldier. Those opposing the legislation contended, (1) that frauds and abuses always accompanied such legislation; (2) that the cost (as had been the case in previous pension enactments) would be far in excess of anything its supporters estimated; (3) no distinction was made as to length of service, financial status, or other income background; and (4) eligibility depended solely on disability to perform manual labor to an extent sufficient to earn a living. Ability to earn a living in some other manner than by manual labor was not considered in determining eligibility.[11]

The dependent pension law fits in quite well with the pattern of pension development which has emerged in this country over the past 175 years. The time which elapsed between the war and pension without regard to service-connected disability was shortened from what it had been in any previous war. In this instance it was only 25 years, while the shortest prior case was 35 years for the veterans of the Revolution. The law was loosely drawn which made it subject to abuse; as for example, while it was aimed to alleviate the distress of those who were indigent and incapable of supporting themselves, the only measure established in the law was that of ability to earn a living by manual labor. There was no provision to prevent those with substantial incomes from applying for and receiving dependent pensions under the act.

In characterizing the law, Glasson says: [12]

> For the favored class, the act of 1890 provided what was practically a species of paid-up insurance against bodily disability of a permanent character caused by accident or chronic disease. The premium was a service of 90 days or more during the Civil War.

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[9] Glasson, William H., Federal Military Pensions in the United States, pp. 148–268.
[10] Dearing, Mary R., Veterans in Politics, Story of the G. A. R.
[11] 84th Cong., 1st sess., House Committee Print No. 171, pp. 69–73.
[12] Glasson, op. cit., p. 236.

At a time when there were no workmen's compensation laws, no social insurance, no protection for the individual against the hazards of life, the veterans of the Civil War had obtained for themselves practically complete protection against loss of income because of physical disability regardless of its cause. It is small wonder that the veterans were pleased.

Although the law made no provision for age, the Commissioner of Pensions, in effect, made it so in 1904 when he ruled that a claimant who had passed the age of 62, if he met all other qualifications, would be adjudged to be one-half disabled and entitled to be rated at $6 a month.

The law applied to widows of deceased veterans as well, and allowed those who could qualify under the law a pension of $8 a month. The widow of a veteran who served 90 days or more, and who was honorably discharged, was entitled to pension without regard to the cause of the veteran's death provided that she was married to him before the date of the act and that she was dependent upon her own daily labor for support. An additional allowance of $2 per month was made for each child under the age of 16.

Following the usual pattern, after the act of 1890 was on the books, there began a series of liberalizations. On May 11, 1912, Civil War pensions were placed on a combination basis including both length of service and age (37 Stat. L. 112). The top pension was $20 per month, which was raised to $30 by an act of 1912 (37 Stat. 112). Successive increases in the rates followed until the rate at present is the same as for Indian War pensioners, $101.59 per month, or for the veteran in need of constant aid and attendance, $135.45.

Pensions for widows of Civil War veterans have been increased from time to time until the maximum rate currently being paid amounts to $67.73 for the aged widow who was the wife of the veteran during his service.

Civil War pensions payments have largely been completed although not finally so. One doughty veteran of that war still survives 90 years after the termination of the conflict, and on April 30, 1955, there were 5,546 death pensioners still on the roll. Total expenditures for pensions and compensation on account of the Civil War to June 30, 1954, amounted to $8,183,440,651, but there is no division of this among veterans and dependents.

SPANISH-AMERICAN WAR PENSIONS

The first statute providing pensions for veterans of the Spanish-American War, the Boxer Rebellion and the Philippine Insurrection (which will hereafter be included under the simple title of "Spanish-American War") was enacted in 1920 (41 Stat. 982–93), 18 years after the close of the war. One item peculiar to this situation was that the Pension Bureau required the veteran to show by hospital records that he was sick or wounded while in service in order to qualify for compensation.

Various arguments in support of the bill were advanced, some of which were new in pension history. Legislation was justified on the basis of the material gain to the United States and the excellence of the record of the Armed Forces in the war. It was the Nation's duty

and privilege to return in some measure to these men who had given their all for their country. Food and living conditions in the camps and on the battlefields were horribly bad, and the death rate in training camps was over three times as high as it was in similar camps during World War I. Finally, a dramatic appeal was made that this was the war which helped bind up the wounds and heal the scars left by the Civil War since this was the first time the sons of the North and the sons of the South had marched into conflict together.[13]

Opponents of the bill were few but vocal. Opposition was voiced because the bill discriminated in favor of Spanish-American War veterans and against those of World War I. Mr. Sam Rayburn of Texas opposed the setting up of a special class of people. If a man was to receive disability pension because he was a veteran, then all disabled men ought to be treated the same. Alarm was voiced over the increasing trend toward dependence upon the Federal Government and the state of mind which such dependence engenders.

The act which was passed (41 Stat. 982) was a combination of age and disability pension. It required 90 days of service, an honorable discharge, and either a disability which incapacitated the veteran from earning a support by manual labor or the attainment of age 62. The disabilities could not be the result of his own vicious habits. Pension rates varied from $12 to $30 a month depending upon the degree of disability as determined by the Commissioner of Pensions. At ages 62, 68, 72, or 75 years, the veteran became eligible for a pension of $12, $18, $24, or $30, respectively.

The first liberalizing enactment was that of May 1, 1926 (Public Law 166, 69th Cong.) which raised pension rates to a range of $20 to $50 depending upon age; another was the act of June 2, 1930 (46 Stat. 492–93), which increased pension rates to a maximum of $60 for 75 years of age, and established a new rate of pension for 70 days of service. The requirement that disabilities not be the result of the veteran's own vicious habits was eliminated. President Hoover vetoed the bill which both Houses of Congress had passed unanimously. After some flaming oratory in the Congress, the bill was passed over the veto with no difficulty.[14]

The Economy Act (Public No. 2, 73d Cong.) enacted March 20, 1933, repealed existing pension provisions, but the laws pertaining to Spanish-American War veterans which were in force on March 19, 1933, were reenacted by section 30 of Public No. 141, 73d Congress, approved March 28, 1934 (48 Stat. 525), and Public 269 of the 74th Congress.

Other legislation for Spanish-American War veterans has been largely only of a liberalizing nature and has not made any significant changes in conditions of entitlement. Rates have been raised until at present, the veteran of this war who served 90 days or more receives $101.59 if he was discharged under conditions other than dishonorable. If he is shown to be in need of the aid and attendance of another person, the pension is $135.45 monthly. Lesser monthly rates of $67.73 and $88.04 are authorized under the same conditions for veterans who served 70 days or more but less than 90 days. On April 30, 1955, 60,685 of these veterans were on the pension rolls.

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[13] 84th Cong., 1st sess., House Committee Print No. 171, pp. 81–88.
[14] Ibid., pp. 88–95.

No special provisions were made for pensions for widows of Spanish-American War veterans until 1918, when they were made eligible for pensions of $12 monthly, plus allowances for dependent children, subject to an income limitation of $250 a year (40 Stat. 903). These pension rates were increased and the terms made somewhat more liberal in 1922 (42 Stat. 834) and following years. The process continued until presently, the widows of these veterans are receiving $54.18 a month, or $67.73 for a widow who was the wife of the veteran during service, with $8.13 additional for each eligible child. On April 30, 1955, there were 80,732 widows of Spanish-American War veterans on the pension rolls.

Expenditures to June 30, 1954, on account of the Spanish-American War amounted to slightly over $3.5 billion with about $2.75 billion going to veterans and the balance to dependents.[15]

The Spanish-American War terminated the period when pensions formed the basic part of the plan for the aid and benefit of veterans. Looking back over the period, a definite pattern can be seen. There was little or no effort to help the veterans readjust themselves to civil life and no attention was given to medical care or rehabilitation of the disabled. The whole idea was that of a rear-guard action designed to help the veteran when old and disabled.

The arguments which were advanced from time to time over the entire period were basically similar. They stressed the debt of gratitude which the Nation owed to the elderly veterans who, in the bloom of their youth and strength had offered their all in defense of freedom or in an effort to prevent the destruction of the Nation. The Treasury was in a position to afford temporary drafts in payment of veterans' benefits, but despite frequent claims and estimates to the contrary, once these benefits were established, they were remarkably expensive and continued for many years. Some proponents of pension laws contended that the Nation owed the veterans a debt to come to their aid whenever they asked for aid.

Arguments on the other side opposed pension enactments because of the expense and predicted dire consequences to the economy. The program was expensive but the predictions of financial ruin never came true, because the country was growing and could absorb the burden. Opponents appealing for logic in the establishment of pensions pointed out that sentiment was not a good basis for legislation. The predictions of opponents of pension enactments were more often proven to be correct in the light of future developments than were those of the supporters.

WORLD WAR I PENSIONS

World War I veterans have not yet had pensions granted to them on the basis of service alone. They do receive, however, pensions based upon minimum service, disability, and need as evidenced by an income limitation. The establishment of this pension in part followed the previous pattern and in part only.

Disability pensions for World War I veterans came only 12 years after the end of the war, thus following the pattern of continued liberalization of this type of benefit by providing it within shorter

[15] Veterans' Administration, 1954 Annual Report, p. 208.

and shorter periods. The program grew out of a situation quite similar to that which gave rise to the Dependent Pension Act of 1890. Many veterans had broken down and become disabled from diseases which they were convinced were caused by service, but for which it was impossible to establish service connection. Out of this situation grew a compromise bill providing what was called disability allowance, which amounted to a pension for non-service-connected disability.

The act of July 3, 1930 (Public 522, 71st Cong.), provided that any veteran who had served 90 days or more during World War I, who had a 25 percent or more permanent disability not the result of service nor of willful misconduct, and who was exempt from the payment of Federal income tax during the preceding year would be eligible to receive a pension. Four degrees of disability were recognized: 25, 50, 75, and 100 percent; and for these respective degrees of disability the rates of pension were $12, $18, $24, and $40 monthly. This was the first time such a pension law had been passed during a period of depression or financial stringency. There was no surplus in the Treasury, although at the time the bill was passed the Treasury was not borrowing heavily.

The law became effective immediately upon passage. The underestimates of the number eligible were not surprising in this instance since the depression of the time had made many eligible who would otherwise have been eliminated by the income limitation. Within about 2½ years of the passage of the act, pensions were being paid to almost 441,000 veterans.

Public No. 2, 73d Congress, the so-called Economy Act enacted March 20, 1933 (48 Stat. 8), repealed the enactment of July 3, 1930, effective June 30, 1933, and substituted more stringent conditions. It was necessary, under this act, for veterans to meet the requirements of Veterans Regulation 1 (a), part III, promulgated by the President pursuant to the authority contained in the Economy Act, in order to continue in receipt of disability pensions. The conditions precedent to entitlement thereunder were 90 days of service, part of which must have been during the war period, or, if less than 90 days, a discharge for disability incurred in service in line of duty; an honorable discharge; permanent and total disability not the result of his own misconduct and annual income not in excess of $1,000 if the veteran was unmarried, or not in excess of $2,500 if the veteran was married or had minor children.

In 1944 (58 Stat. 230) the rate was increased to $50 monthly with the provision that the rate should be increased to $60 monthly when the veteran was 65 years of age or had been rated permanent and total and in receipt of pension for a continuous period of 10 years. Discharge or release under conditions other than dishonorable was allowed. By 1946 (Public Law 662, 79th Cong.) the rates were raised to $60 and $72. Shortly thereafter, the income limitations were raised to $1,400 for a single individual and to $2,700 for a veteran who was married or had dependents. Currently, veterans otherwise eligible for pensions are entitled to basic rates of $66.15 or $78.75 monthly, and to $135.45 monthly when in need of regular aid and attendance. To June 30, 1954, expenditures for pensions to World War I veterans l d amounted to slightly over $2 billion.[16]

[16] Veterans' Administration, 1954 Annual Report, p. 209.

Widows' pensions

Death pension for World War I widows was not enacted when the "disability allowance" was authorized, but was delayed 4 more years until 1934. The act (Public 484, 73d Cong.) required a 30 percent service-connected disability on the part of the veteran and death from neither misconduct nor service-connected causes to entitle the widow to pension. An income limitation barred from eligibility anyone who had paid Federal income tax the preceding year, and the limiting date of marriage was July 3, 1931. Pension for the widow was $22 per month with allowances for children in addition. Total pension was limited to $56 a month.

A series of liberalizations in the requirements for eligibility for widow's pension took place during the following years. In 1936 (Public 844, 74th Cong.) dependents of presumptive and misconduct cases were made eligible. In three steps from 1937 to 1939, the requirement of a specific degree of service-connected disability on the part of the veteran was removed, and for it was substituted the requirement that he must have a disability which would have been compensable had it been in sufficient degree. In 1944 (Public 483, 78th Cong.), any requirement of service-connected disability on the part of the veteran was removed. The date of marriage was fixed as "prior to December 14, 1944, or 10 or more years to the person who served; continuous cohabitation from date of marriage to date of the veteran's death was required except where separation was due to misconduct of or procured by the veteran without fault of the widow." The pension rate for the widow is $50.40 with allowances for children, with an income limitation of $1,400, for a widow alone or $2,700 for one with dependents. To June 30, 1954, almost $1.2 billion had been expended for widows' pensions for World War I.

WORLD WAR II AND KOREAN CONFLICT PENSIONS

Pensions to World War II veterans were provided on the same basis as those for World War I veterans in 1944 (Public 313, 78th Cong.). Under this act, the provisions of paragraph I (f), part III, Veterans Regulation No. 1 (a), as amended, was made applicable to World War II veterans. Rates of pension are $66.15 per month for permanent total disability; $78.75 per month for permanent total disability and receipt of a pension for 10 years, or attainment of age 65; and $135.45 per month for permanent total disability, requiring regular aid and attendance.

Pensions to veterans of the Korean conflict were provided on May 11, 1951 (Public 28, 82d Cong.), when the laws providing pensions (and some other benefits) for World War II veterans were made applicable to veterans of the Korean conflict. Amendments since that date have applied to veterans of World War I, World War II, and the Korean conflict.

Pensions to widows of World War II veterans were provided also on May 27, 1944 (Public 312, 78th Cong.), with limitations, of course, as to the date of marriage, and the period of service of the veteran. To be eligible for a pension, the widow of the World War II veteran must have been married to the veteran prior to January 1, 1957. Continuous cohabitation is required as for World War I. Also, in order for the widow of the World War II veteran dying of non-service-

connected causes to be eligible for pension, the veteran must be receiving or be eligible to receive pension, compensation or retirement pay for disability, or he must have had at the time of his death a service-conected disability for which compensation would have been paid if 10 percent or more in degree. Pension rates are the same as for World War I widows.

Pensions to widows of Korean conflict veterans dying of non-service-connected causes are the same as those for World War II widows. Public No. 28 of the 82d Congress made the laws providing pensions (and certain other benefits) for World War II veterans applicable also to veterans of service on and after June 27, 1950, and prior to February 1, 1955. To be eligible for the pension, the widow must be married to the veteran prior to February 1, 1965.

SUMMARY

Some type of pension has been provided for the veterans of every war in which the United States has engaged starting with the Revolution and continuing through the Korean conflict. These pensions were not on the basis of disability arising from either disease or injury suffered as a result of military service. They were based for Revolutionary War veterans on the idea of reward to the veteran for long and arduous service performed under difficult conditions during a war. Later, the long and arduous service idea was dropped from pension legislation, and the basis of pension seems to have been to aid the veteran who was unable to reestablish himself upon his return to civilian life well enough that he was able to compete with his non-veteran contemporaries. In this way, the pension was a backward-looking device, designed to remedy a situation which might have been prevented by some earlier action, such as an effort to aid the veteran with his problems of readjustment. Now that readjustment benefits have been made available to veterans to aid them with the problems of reentry into the civilian economy, the philosophy of pensions may have to undergo another change.

Precedent for pensions was established during an earlier, simpler era when no social-security program existed and when the individual was forced to make provisions for his old age through his own personal efforts. In these latter days, pensions continue to be provided under various circumstances for veterans of our wars in spite of the fact that the economic and social conditions which prevailed previously, and which brought pensions into existence, no longer exist.

A definite pattern of liberalization in conditions of eligibility for pensions has appeared following various wars, and a second pattern of a decreasing time period following the war before the passage of pension legislation. Pensions for World War I veterans have been liberalized. This was brought about by Extension Five of the 1945 Veterans' Administration's Disability Rating Schedule issued by the Administrator of Veterans' Affairs on October 7, 1948, which provided that the veteran who upon reaching 65 years of age and showing a 10-percent disability and unemployability should be considered totally disable for purposes of disability pension. The effect of this provision is determined quite largely by the methods used for determining employability since almost any man of 65 will have some disability which can be rated at 10 percent or more.

The progressive shortening of the period elapsed between the end of the war and the passage of pension legislation has gone on steadily. The first Indian Wars pension was delayed 50 years after the end of the war to which it applied; the Civil War, 24 years; the war with Spain, 18 year; World War I, 12 years; World War II, about 3 years after the war started, and before it ended; and Korean conflict, less that 1 year after the war started.

APPENDIX B—CHAPTER IX, "COSTS—PAST, PRESENT, AND FUTURE," AN EXCERPT FROM "ANALYSIS AND EVALUATION OF THE NON-SERVICE-CONNECTED PENSON PROGRAM," A STUDY SUBMITTED BY THE VETERANS' ADMINISTRATION, JANUARY 30, 1978

CHAPTER IX

COST - PAST, PRESENT, AND FUTURE

I. PAST

In this study, the terms disability or live pension apply to the program for veterans, and death pension to that for survivors.

Direct Benefit Costs - Disability Pension

Since the beginning of the current pension program in 1960, total annual pension costs have increased by $743,922,636.

Disability pension payments have increased from $910 million in FY 1960 to $1.654 billion in 1976. (See Table IX-A). Prior to 1973, these payments went primarily to World War I veterans on the rolls. The increases in program costs can be attributed to the changes in base pension and ages in higher yearly cost for veteran population, i.e., World War II and Korean conflict veterans at the critical age 65.

Direct Benefit Costs - Death Pension

Since 1960, total death pension costs have increased by $873,412,624. Due to the advancing age of World War I and World War II veterans, more survivors are now eligible for

death pension. The accelerating death rate and changes in the program are the primary factors for the increase in yearly death pension costs.

Death pension payments have gradually increased from $353 million in FY 1960 to $1,098 million in FY 1973. (See Table IX-B). A substantial increase in costs in FY 1961 matched a like increase in beneficaries due to the liberalized provisions of Public Law 86-211, which equalized eligibility requirements for widow(er)s and children of World War II and the Korean conflict with those applicable to survivors of World War I veterans. FY 1974 showed a slight decrease in costs due to the decrease in the number on the rolls. Costs increased in FY 1975 and FY 1976 as the population of recipients expanded once more along with legislative increases in pension payments. A gradual increase in costs is anticipated through the 1980's because of the advancing age of the World War II veteran class, thereby creating the potential for more eligible persons to be added to the death pension rolls. Following 1990, a decline in costs is expected, due to the anticipated reduction in survivors.

PENSION CLAIMS - NUMBER RECEIVING BENEFITS

Disability Pension

When the current law pension system was enacted in 1960, there were 980,720 pensioners receiving disability pension benefits. As of 1976, there were 1,015,658 pensioners receiving disability pension benefits, an increase of 3.56% from 1960. (See Table IX-C).

The number of disability pension cases increased at an accelerated rate from 590,966 in FY 1955 to 980,720 in 1960, with the rate of increase slowing down with a peak of 1.206 million cases reached in 1966 when the accretion of World War I veterans reached its peak. The decreased rate following 1972 is expected to continue to approximately 1,004 thousand in FY 1980. The decreasing rate is attributed to an increased mortality rate among older World War I veterans on the rolls.

Over the same period of years, from 1960 to 1976, fluctuations in the number receiving pension benefits and the first year costs can be attributed to the enactment of various pieces of legislation which affected the non-service-connected

disability pension program. (Significant legislative changes affecting the number of beneficiaries in receipt of disability pension are reflected in the figures shown on the Table IX-D).

During years from 1966 through 1971, a steady decline in the number of live pensioners on the rolls was demonstrated. In 1972, in response to Social Security increases, Congress enacted Public Law 92-198 which adopted a new formula approach to the payment of pension. This legislation was intended to prevent the net loss of aggregate income for any pensioner who continued to qualify for pension. Under the formula approach, the pension reduction is always less than the increase in outside income, provided entitlement to pension continues. This legislation may have been a significant factor in explaining the increase in the number of living veterans in receipt of pension between 1971 and 1972.

From 1972 on, a resumption in the decline in numbers of living veterans on the rolls is noted. Yet, the first year costs of subsequent legislation (i.e., Public Law 93-177 and Public Law 93-527) exhibited a dramatic increase, relative

to prior first years' costs. This apparent paradox of declining recipient population and substantial increase in first year costs appears to be the result of the legislation itself which raised all pension rates payable by an average of 10% and 12%, respectively for these two laws.

Death Pension

Unlike the gradual decline in the number of veterans receiving disability pension, death pension cases have shown a steady rate of growth from 559,363 in FY 1960 to 1.261 million in FY 1976, or an increase of 125% from 1960. (See Table IX-E). The number of death pension cases increased significantly in FY 1961 because of the effects of Public Law 81-211 which equalized the eligibility requirements for dependents of World War I, World War II and Korean conflict veterans. During the years 1975 and 1976, the trend increased due to the aging and death increasing numbers of World War I and World War II veterans, thereby expanding the population of survivors eligible for death pension.

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The following is a brief description of the changes to the pension program brought about through legislation enacted from 1960 through 1975. The changes in the law produced thereby were a causative factor in the spiraling costs of the pension program. The estimated first year cost of each law is shown in Table IX-P.

Public Law 86-211, effective July 1, 1960 - established the current law pension system to include all income of the veteran and spouse less specified exclusions; required the filing of an annual income report; and, provided an additional allowance of $70 monthly to veterans determined to be in need of aid and attendance.

Public Law 88-664, effective January 1, 1965 - increased rates of payment by an average of 10%; allowed additional exclusions from income, including a 10% deduction from retirement types of income; and, excluded from countable income for Veterans Administration pension purposes all income in excess of whichever is the greater, all earned income or up to $1,200 of unearned income of a veteran's spouse. It also provided a housebound benefit for veterans, and allowed drugs and medicines to be furnished to those

veterans in receipt of an additional allowance due to need of regular aid and attendance.

Public Law 90-77, effective October 1, 1967 - increased benefit payment rates approximately 5.4%, and allowed for the presumption that a veteran was permanently and totally disabled after age 65. Authorized payment of aid and attendance allowances for veterans and widow(er)s with nursing home patient status.

Public Law 90-275, effective January 1, 1969 - instituted a multi-level benefit reduction system based on income increments of $100 versus the prior three level system, and raised the income limitation under the old law pension by $200.

Public Law 91-588, effective January 1, 1971 - increased benefit rates by an average of 9.5%.

Public Law 92-198, effective January 1, 1972 - increased benefit rates by 6.5%; instituted the formula concept for the payment of pension benefits; allowed unreimbursed medical expenses over 5% of the gross countable income as

an exclusion from countable income for Veterans Administration pension purposes; and, authorized end-of-the-year rule protection to a veteran who suffered a loss of dependent(s).

Public Law 93-177, effective January 1, 1974 - increased rates by 10% allowed the effective date of permanent and total disability rating to be one year prior to the date of claim; and, increased the amount payable from $30 to $50 per month for those single veterans with no dependents, who are hospitalized at VA expense after two full months of hospitalization.

Public Law 93-527, effective January 1, 1975 - increased the rates payable by approximately 12%.

Public Law 94-169, effective January 1, 1976 - increased the rates of payment by 8%.

Public Law 94-432, effective January 1, 1977 - extended the increase in rates of pension payment, instituted by P.L. 94-169, from September 30, 1976 through December 31, 1976. Increased the benefit rates by 7% and provided for an additional 25% increase in rates to eligible veterans 78 years of age and older.

EXPENDITURES FOR LIVING VETERANS RECEIVING PENSION - Includes Special Acts - IX-A

Fiscal Year	Total	Vietnam Era	Korean Conflict	World War II	World War I	All Other
1951	$ 338,984,747		$ 100	$ 22,461,801	$ 206,227,130	$ 100,295,716
1952	363,620,620		66,419	26,842,530	242,600,955	94,110,716
1953	429,855,313		302,925	34,935,882	300,796,926	93,821,580
1954	473,902,785		652,064	39,684,090	346,123,049	87,443,582
1955	537,068,272		1,129,113	46,867,365	408,304,969	80,766,825
1956	602,824,437		1,775,185	53,422,436	474,141,118	73,485,698
1957	656,466,128		2,720,690	56,771,352	530,720,633	66,253,453
1958	728,054,781		3,509,732	62,936,870	602,560,058	59,048,121
1959	814,102,713		4,732,538	71,366,623	686,055,000	51,928,552
1960	910,392,197		5,756,363	79,512,855	780,033,065	45,089,914
1961	1,071,780,255		7,388,000	100,482,693	924,710,800	39,198,762
1962	1,123,928,340		9,053,938	119,591,142	961,576,171	33,707,089
1963	1,151,122,469		10,465,368	140,361,665	971,796,930	28,498,506
1964	1,154,580,715		12,438,068	167,772,700	950,506,871	23,863,074
1965	1,223,930,503		16,018,930	219,347,271	968,029,650	20,534,652
1966	1,300,574,000		19,873,000	282,229,000	980,621,000	17,850,000
1967	1,263,193,028		22,138,796	312,462,034	914,304,341	14,287,857
1968	1,272,445,853	$ 285,985	25,734,739	358,458,008	876,131,436	11,834,685
1969	1,317,919,000	1,062,000	30,359,000	418,715,000	858,140,000	9,643,000
1970	1,357,113,000	2,100,000	36,143,000	483,978,000	827,316,000	7,576,000
1971	1,386,343,000	3,416,000	42,671,000	555,299,000	778,880,000	6,077,000
1972	1,476,626,000	5,507,000	53,343,000	665,388,000	746,828,000	5,360,000
1973	1,476,651,000	7,644,000	62,936,000	732,359,000	669,524,000	4,188,000
1974	1,475,547,000	9,707,000	71,412,000	791,952,000	599,331,000	3,145,000
1975	1,572,885,000	13,447,000	88,731,000	912,194,000	555,819,000	2,696,000
1976	1,654,314,833	17,239,176	108,243,882	1,025,063,984	501,639,326	2,128,465
TQ76	414,906,048	5,056,844	29,592,707	264,198,714	115,610,771	447,012

EXPENDITURES FOR DEAD VETERANS WHOSE DEPENDENTS WERE RECEIVING PENSION - INCLUDES SPECIAL ACTS - IX-B

Fiscal Year	Total	Vietnam Era	Korean Conflict	World War II	World War I	All Other
1951	$ 188,676,880			$ 7,752,520	$ 125,197,643	$ 55,726,717
1952	193,946,564		$ 1,512	9,094,119	130,187,164	54,663,769
1953	229,830,591		23,263	13,356,229	158,812,254	57,638,845
1954	241,730,745		93,520	15,274,342	169,352,973	57,009,910
1955	263,407,686		235,056	18,684,162	186,075,065	58,413,403
1956	279,551,372		408,902	21,546,244	199,330,242	58,265,934
1957	293,762,055		661,539	24,938,252	211,061,368	57,100,896
1958	307,698,031		1,025,434	28,227,972	222,318,936	56,126,589
1959	338,331,785		1,219,677	32,333,276	238,380,493	66,398,339
1960	352,688,270		1,527,563	36,225,760	250,249,567	64,685,380
1961	459,668,107		7,282,182	110,577,665	279,580,785	62,227,475
1962	508,424,740		11,445,869	149,415,737	287,804,152	59,758,982
1963	546,689,668		14,818,558	176,853,082	298,087,952	56,930,076
1964	585,344,700		18,765,992	205,757,489	307,154,275	53,666,944
1965	639,530,235		23,844,840	240,194,497	325,366,515	50,124,383
1966	688,866,000		28,990,000	270,642,000	342,044,000	47,190,000
1967	712,330,343		33,979,027	290,846,905	343,977,530	43,526,881
1968	779,419,122	$ 308,729	41,463,765	325,084,324	368,454,923	44,107,381
1969	849,216,000	944,000	48,921,000	356,334,000	400,314,000	42,703,000
1970	907,434,000	2,182,000	56,877,000	385,277,000	423,188,000	39,910,000
1971	963,656,000	4,480,000	64,947,000	409,686,000	447,477,000	37,066,000
1972	1,065,582,000	7,262,000	76,524,000	455,841,000	491,450,000	34,505,000
1973	1,097,847,000	10,096,000	85,462,000	478,348,000	491,533,000	32,408,000
1974	1,092,989,000	12,979,000	92,518,000	488,776,000	469,097,000	29,619,000
1975	1,153,097,000	17,302,000	105,329,000	530,500,000	472,564,000	27,402,000
1976	1,226,100,894	23,446,116	120,192,043	581,379,824	475,536,114	25,546,797
TQ76	303,917,324	6,745,204	31,113,390	144,758,503	115,271,630	6,028,597

LIVING VETERANS RECEIVING PENSION - Including Special Acts - IX-C

End of Fiscal Year	Total	Vietnam Era	Korean Conflict	World War II	World War I	All Other
1951	393,741		6	29,958	278,287	85,490
1952	436,657		164	36,101	321,099	79,293
1953	484,448		501	41,580	369,752	72,615
1954	533,278		912	48,038	417,871	66,457
1955	590,966		1,526	54,436	474,762	60,242
1956	653,820		2,229	59,714	535,442	56,435
1957	720,406		3,260	65,400	601,097	50,649
1958	785,238		4,178	71,265	665,220	44,575
1959	879,781		5,386	81,384	753,949	39,062
1960	980,720		6,469	89,526	851,257	33,468
1961	1,106,160		7,622	105,415	964,084	29,039
1962	1,161,976		8,937	121,990	1,006,535	24,514
1963	1,190,945		10,401	144,023	1,014,108	22,413
1964	1,202,664		12,470	173,280	999,797	17,117
1965	1,223,692		14,824	211,166	983,545	14,157
1966	1,206,803		16,676	245,061	933,609	11,457
1967	1,182,028		18,800	277,202	876,806	9,220
1968	1,151,927	327	21,152	308,299	814,917	7,232
1969	1,120,087	802	23,365	338,688	751,740	5,490
1970	1,088,994	1,423	26,204	371,065	685,890	4,412
1971	1,075,729	2,298	30,446	415,718	623,762	3,505
1972	1,086,103	3,563	36,122	474,559	568,793	3,066
1973	1,053,242	4,760	41,111	508,664	496,357	2,350
1974	1,030,097	5,885	45,587	536,614	440,185	1,826
1975	1,006,168	7,229	51,660	571,093	374,715	1,471
1976	1,003,248	8,954	59,258	609,362	324,629	1,045
TQ76	1,015,658	9,707	62,021	626,939	315,999	992

NUMBER RECEIVING DISABILITY AND DEATH PENSION
IN 1960 AND IN YEARS OF PENSION LAW CHANGES - IX-D

Year	Living Veterans	Dependents of Deceased Veterans
1960	980,720	559,363
1966	1,206,803	974,419
1968	1,151,927	1,074,962
1970	1,088,994	1,169,226
1971	1,075,729	1,211,438
1972	1,086,103	1,266,016
1974	1,030,097	1,256,280
1975	1,006,168	1,259,191
1976	1,015,658	1,261,753
Net Gain, 1960-1976, Number Receiving Pension	34,938	702,390
Percent Increase, 1960 - 1976, Number Receiving Pension	3.56%	125.56%

DECEASED VETERANS WHOSE DEPENDENTS WERE RECEIVING PENSION -\INCLUDES SPECIAL ACTS - IX-E

End of Fiscal Year	Total	Vietnam Era	Korean Conflict	World War II	World War I	All Other
1951	338,202		5	13,855	233,065	91,277
1952	352,281		4	16,740	244,748	90,789
1953	378,052		45	20,835	267,465	89,707
1954	401,434		159	24,981	287,166	89,128
1955	424,716		374	29,006	307,291	88,045
1956	452,507		599	32,697	327,796	91,415
1957	477,311		937	38,002	347,065	91,307
1958	496,916		1,366	42,854	367,838	84,858
1959	528,005		1,821	49,202	394,852	82,130
1960	559,363		2,375	55,956	418,998	82,034
1961	682,949		9,563	148,230	446,655	78,501
1962	745,408		14,153	191,786	464,964	74,505
1963	810,444		18,688	232,688	487,610	71,458
1964	871,894		23,701	273,124	507,459	67,610
1965	929,024		28,879	308,749	527,819	63,577
1966	974,419		33,909	340,524	541,202	58,784
1967	1,024,882		40,204	375,813	554,490	54,375
1968	1,074,962	581	46,819	407,993	569,460	50,109
1969	1,124,578	1,634	53,861	436,792	585,412	46,879
1970	1,169,226	3,310	61,743	465,028	596,380	42,765
1971	1,211,438	5,556	69,983	493,014	604,557	38,328
1972	1,266,016	8,437	78,852	523,352	620,261	35,114
1973	1,280,644	11,098	86,086	535,015	616,754	31,691
1974	1,256,280	13,483	90,958	530,408	592,726	28,705
1975	1,259,191	16,480	96,526	539,926	580,802	25,457
1976	1,263,229	20,460	102,550	553,278	564,173	22,768
TQ76	1,261,753	21,669	103,202	552,372	562,374	22,136

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FIRST YEAR COSTS OF PENSION LAW CHANGES - IX-F

Public Law	First Year	Cost
PL 86-211	1961	$309,000,000
PL 88-664	1966	$ 87,761,000
PL 90-77	1968	$121,641,000
PL 90-275	1970	$128,883,000
PL 91-588	1971	$159,700,000
PL 92-198	1972	$129,312,000
PL 93-177	1974	$238,900,000
PL 93-527	1975	$291,800,000
PL 94-169	1976	$150,100,000
PL 94-432	1977	$414,200,000

II. PRESENT

Budget estimates are made by the Executive Department covering the next fiscal year, and further estimates are made for planning purposes for a five fiscal year period. A magnitude cost estimate for the pension program is as follows:

ESTIMATED COSTS FOR PENSION PROGRAM

Year	Estimated Costs	Estimated Cases
1977	$3,130,973,000	2,293,055
1978	$3,149,249,000	2,330,495
1979	$3,052,749,000	2,241,705
1980	$3,018,044,000	2,178,088
1981	$2,927,449,000	2,136,831
1982	$2,806,201,000	2,075,783
1983	$2,693,201,000	2,019,881

Each year's budget estimate, however, is not the final budget because outside factors usually affect the estimate. For example, the fiscal year 1977 budget had to be increased over the prior estimate by about $377.7 million for 1977. The principal reason for this adjustment was that Public Law 94-169 granted only a nine month increase in pension

rates and income limits. Public Law 94-432 enabled pension recipients to continue receiving the higher pension rates through December 31, 1976. In addition, the subsequent law provided increases in pension rates and income limits for the remainder of fiscal year 1977.

III. LONG TERM CHARACTERISTICS AND FUTURE POPULATION

Introduction

As part of an analysis of the present and future costs of the veterans' pension programs, a study was carried out to estimate the size and age distribution of the population of potentially eligible pension recipients. The potentially eligible population consists of war-service veterans (disability pension) and certain survivors of war-service veterans: surviving spouses and children (death pension). The study concentrated on estimating the rapidly increasing population of surviving spouses. A description of the study and its results are presented here. A complete report on this study entitled Present and Future Population of Surviving Spouses of Wartime Veterans, is available from the Veterans Administration. Reliable estimates of the declining population of war veterans were already available and were confirmed by

the study. The relatively small population of children alone was ignored.

The size and distribution by age of this population of surviving spouses (the vast majority of whom are widows) were estimated for the years 1975, 1980, 1985, 1990, 1995 and 2000, by means of a dynamic population model. Using as input appropriate assumptions about the demographic characteristics of the members of the population (age, sex, race and marital status), the model predicts the numbers and ages of surviving members of the population and of the new additions to the population in five year steps. Over the 25-year period from 1975 to 2000, the number of surviving spouses is estimated to increase by about 130 percent. During that same period, the projected change in the population of war-service veterans is a decrease of about 40 percent, from approximately 26,500,000 to 15,800,000. As would be expected, many of the members of these populations fall into the older age categories. In the year 2000, about 6,700,000 (or 85 percent) of the surviving spouses will fall into the aged-65-and-older group. For the veterans, the number over 65 years of age in 2000 is estimated to be 7,300,000 (or about 46 percent). (See Tables IX-G1 and IX-G2 at end of chapter).

Methodology

As part of an analysis to project the future costs of the existing veterans' pension program and of various proposed reforms of the program, an estimate was needed of the future number of expected pension recipients by different beneficiary types: disabled wartime veterans, surviving spouses of wartime veterans, and surviving children of wartime veterans. The first step in estimating the number of recipients in different categories is to estimate the size of the underlying populations of potentially eligible recipients. Reliable estimates are already available of the current and future population of wartime veterans, assuming, of course, no future armed conflicts. For the population of surviving spouses, however, routine estimating procedures are too approximate to be extended for long periods into the future.

A population model was developed to estimate the number and ages of surviving spouses of wartime veterans from the year 1975 to 2000, at five year intervals. These surviving spouses of veterans are potentially eligible to receive death pensions if they satisfy certain needs requirements,

and if they are not married. Surviving spouses of veterans temporarily lose their eligibility if they remarry, however, they regain eligibility if the subsequent marriage terminates. Therefore, these remarried surviving spouses are included in the potentially eligible population. The sex of the vast majority of wartime veterans is male, accordingly; the sex of the majority of the surviving spouses of such veterans is female. For that reason and because in the model the demographic characteristics assumed were those of males (for veterans) and females (for surviving spouses), the surviving spouses will be referred to as "widows" in the remainder of this report.

A computerized model was constructed to carry out these population projections. The model was used to establish the number of veterans' widows in the base year and to predict the number of surviving and newly created widows in the subsequent years under a series of different assumptions about the demographic variables. The year 1975 was selected as the base year for this 25-year projection. The number and ages of the population of veterans' widows in 1975 were first established (see the "base year" section for details of this calculation). The model then aged these widows

and applied a mortality factor to determine the number and ages of the surviving members of this population in the years 1980, 1985, 1990, 1995 and 2000.

At the same time, the number and ages of the population of wartime veterans in 1975 was estimated. This 1975 veterans' population was then aged by the model and a mortality factor applied in order to compute the number and ages of both the surviving veterans and the deceased veterans at the five future time periods. The population of surviving veterans was augmented over each period by the number of individuals newly separated from the military and qualifying as wartime veterans. The number and ages of the veterans projected as dying during each of the five time periods is important since some of these deaths result in new members being added to the population of widows. The number of newly created widows is estimated using, for each age group whose deaths are being considered, the proportion of veterans in that age group out of the total who are married. For example, if 10,000 veteran deaths are projected as occurring in a group and the proportion of married veterans for the group is 83 percent, then 8,300

widows would be created. These newly created widows are treated, over the remaining time periods, in the same way as the base year widows: they are aged and the number and ages of those surviving to the future periods is estimated.

Summary of the Model Projections

The results of this dynamic modeling of the changes to the populations of veterans and widows of veterans, of course, show the members of the population become more aged over a period of time. Members are eliminated from the widows' population by death, and members are added by the deaths of married veterans. The attrition in veterans' population occurs through deaths, and additions are due to the future separations from the military. The net effect of the additions and subtractions in the case of the widows' population is to increase it by about 227 percent over the 25 year period (from 3,480,000 to 7,900,000). For the veterans' population the net effect is about a 40 percent decrease over that period (from 26,500,000 to 15,800,000). The age distributions of the populations are of interest

since older people are more likely than younger people to be needy, and because veterans become more likely to satisfy the pension's disability requirement as they become older. The part of the veterans' population which is 65 years old and older increases over the 25 years by about 344 percent (from 2,131,000 to 7,320,000). (See Table IX-G at the end of this chapter).

Assumptions of the Population Model

A number of simplifying assumptions about the composition, characteristics, and behavior of the veterans' and widows' population were made in this study. These simplifications rendered the structure of the model more manageable and took advantage of existing sources of input data. Where it was thought possible that a change in assumption might have a material effect on the population projections, different variations on the assumptions were tested. These assumptions relate both to the structure design of the model and the input data. Two important broad assumptions were that recipients of pension resemble the total U.S. white population and that certain demographic variables remain constant over the period studied. The results of the tests of different

assumptions are described in the portion of the paper entitled "Sensitivity Analysis."

A fundamental assumption of the model was that all veterans are male and, consequently, all surviving spouses of veterans are female. This assumption has effects upon the mortality values used to predict deaths and survivors and the ages imputed to newly created widows. In 1975, more than 98 percent of all wartime veterans were males.

The preferred survivorship rates used in the model were those computed in 1975 by the U.S. census for white males and white females. Various other mortality rates were tested (see the "Sensitivity Analysis" section). The white mortalities were selected as preferable, in part, because of a general consensus that the mortality rates for veterans are less than those for the total population and, also, because the veteran population at the older age groupings (where the mortality rate is high and hence many new widows are created) is more predominately white than is the general population of the same age.

The age distributions throughout the study were computed with the populations grouped into 16 categories by age. Except for the lower and upper ends of the distributions, these categories represented five-year age groupings. For widows they were: less than 20 years, 20-24 years, 25-29 years, 30-34 years, 35-39 years, 40-44 years, 45-49 years, 50-54 years, 55-59 years, 60-64 years, 65-69 years, 70-74 years, 75-79 years, 80-84 years, 85-89 years, and 90 and over years. For the veterans the categories were similar to those for widows but with the end points of each interval increased by three years, i.e., less than 23 years, 23-27 years, . . ., 88-92 years, 93 years and older. The difference in the age intervals for veterans compared to widows was necessary to allow for an appropriate age difference between veterans and their widows, as discussed below. Considering the population by five year increments, rather than considering single years of age, results in some loss of accuracy; however, the amount of such loss is minor and in keeping with the level of approximation of other assumptions of the model. Data from which the base year population of widows was generated were available only in the specified five-year age groupings.

To estimate the ages of newly created widows, a further simplification was made. As veterans in an age group die (for example, the 63 through 67 year olds), those who were married at the time of their death leave widows. In order to add these widows to the population and to compute how long they in turn can be expected to live, their ages must be estimated. The actual age distribution of these new widows is not known, however, the assumptions were made that an average age could be used and that the appropriate value for this average was three years less than the age of the veteran-husband. Thus, deaths of veterans in the 63-67 year age group result in the creation of new widows age 60-65 years. The age difference of three years was chosen to reflect U.S. census figures. The proportion of veterans married in each age grouping was approximated by taking the U.S. census figure for the median age of married white males in a particular age group. For example, when veteran deaths of those aged 63-67 are considered, we know that the mid-point age of this group will go from 65 in the initial year to 69 at the end of the five-year period. Therefore, the marriage rate factor applied to this group was that of 65-69 year olds.

A portion of the widows will remarry and lose their status as "widows" for Veterans Administration pension purposes. However, they are still members of the population of potentially eligibles since they may qualify for a pension if their current marriage terminates through death or divorce. Some such marriages will end in divorce and about 80 percent of these remarried widows will survive their new husbands. The model, therefore, makes no distinction between widows who remarry and those who remain single. For those widows who are remarried to other wartime veterans, however, this feature of the model will lead to a slight overestimate of the total number of widows. As their second husbands die, they will be added as additional widows to the population. For the base year period the number of such "doubly counted" widows was estimated as about five percent of the total. These remarried-to-veterans widows were eliminated from the base year population. In the projections to future years, however, some such widows will appear as members of the newly created portion of the widows population.

New additions to the veterans' population occur due to the future separation from the Armed Forces of current members who will be classed as wartime veterans when they leave the military. The number and ages of these veterans is based on estimates made by the Department of Defense. For the purposes of the model, service during the Vietnam era is assumed to be the last wartime period which enables future veterans to qualify as wartime veterans. Such veterans would be at least aged 17 in 1975 and, for future periods, no one who was younger than 17 in 1975 will be considered as a new addition to the population. Our Nation may, of course, be involved in future armed conflicts during the next 25 years, however, it is obvious that we are unable to make any predictions relating thereto at the present time. Such predictions are not crucial to the estimates of this model in any case, since most participants in future wars will be under 25 years of age, and, even if a war began tomorrow, will be under age 50 at the end of the model's 25-year projection period. At ages below 50 years such

veterans would not be expected to contribute significant numbers to the pension rolls either as recipients themselves or as the producers of widows.

Estimates of the Base Year Populations

The number of veterans in the base year population was estimated by starting with Veterans Administration and U.S. Bureau of the Census figures for veterans by single years of age in 1970. These veterans were aged one year at a time over five years and the mortality figure of U.S. white males applied successively to estimate the numbers of survivors. These survivors were then grouped into the 16 age group categories.

The estimation of the number of widows in 1975 was more complicated. Widows of veterans are not specifically identified by the census in standard compilations. In 1968, however, a special study of widows was carried out and the number of veterans' widows in the total population by five-year age groups was estimated from a sample of 1,500 veterans' widows. The number of veterans' widows receiving pensions in 1968 was noted for the same age groups. The proportion of

recipients in the population of potential eligibles is the "recipient ratio." If we assume that this ratio remains approximately constant for the two years after 1968, then the reciprocal of the ratio can be used in 1970 with information on the number of recipients to predict, by age, the size of the underlying population of potentially eligible widows. This procedure was followed to give an estimate in 1970 of the population of veterans' widows. This 1970 widows' population along with the 1970 veterans' population and the actual numbers by age of new separations between 1970 and 1975 was provided as input to a special one-period projection run of the computer program from the population model, and the resulting age distribution of widows for 1975 was computed. This distribution shows the net effect of widows' and veterans' deaths upon the 1970 population.

The 1975 distribution of widows was then used as the base year input to the 25-year projection of the number of widows. This distribution for the base year widows is more accurate than that obtained by the routine "widows' factor" method which has been used since 1969 to determine the approximate number of veterans' widows in current and future years.

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A side benefit provided by the calculation of widows for the base year was the opportunity to check the operation of the part of the model which predicts the size of the veterans' population. The age distribution of the number of surviving veterans in 1975 produced by the long-range pension computer program during the estimation of 1975 widows was compared to the distribution of veterans obtained by the routine estimating method. The latter involves hand calculations of the repeated projections into the future, one year at a time, of 1970 veterans grouped by single years of age. The total number of veterans obtained by the two different methods are in close agreement: 26,494,000 for the routine calculations and 26,487,000 for the computer model. This comparison shows that no appreciable accuracy is lost in the computer model where the veterans population is collapsed into five-year age groups and five year survival rates are applied in order to estimate the population five years later.

SENSITIVITY ANALYSIS

Overview

Detailed analyses were made of the effect of changes in the mortality and marital status assumptions used as input to

the model. Different, reasonable assumptions about mortality resulted in quite small changes in the population projections: three percent or less by the year 2000. Marital status changes, on the other hand, could lead to reductions in the widows' population of about 11 percent by 2000. The simplifying assumptions affecting the structure of the model were qualitatively assessed to lead to differences in the projections (in both increasing and decreasing directions) of between two and five percent. Overall, the accuracy of the projections is estimated to be within approximately ten percent, with the value for widows being more likely an overestimate than an underestimate.

Mortality

The sensitivity analysis for mortality tested the effects upon the population projections of four different combinations of mortality rates (or survivorship rates) for veterans and widows. These rates are summarized in Table IX-H. The mortalities selected as preferred were those of the U.S. white population in 1975 for females and males (combination one). The reasons for this selection were cited earlier.

The second set of mortalities (total U.S. population) was chosen as the lowest reasonable set of values for the

mortality. It turned out, however, that the veterans specific mortality rates produced in a National Academy of Sciences (NAS) Study resulted in even lower survivorship for the veterans so these latter values (combination three) became the "worst case" mortalities. The NAS mortalities are worse than the total U.S. population for the older age grouping. In our opinion this difference is an overestimate of the number of deaths and may be due to variability arising from the small sample sizes available for the estimates of those groups. The fourth mortality combination assumes that there will be gradually improving mortality rates between 1975 and 2000.

As can be seen from the figures in Table IX-I, the choice of mortality rates makes little difference to the final population figures. For the preferred mortality the population figures for the year 2000 expressed as percentages of the base year are 229 percent for widows and 62 percent for veterans. Using the worst case mortalities, the percentage for veterans is 60, and, since there are more deaths, the number of widows is 241 percent of the 1975 value. The

hypothesis, gradually improving mortality, is a sufficiently small improvement, resulting in only a change of the veterans' population of 63 percent of the base year compared to 62 percent for the preferred mortality. The net effect of improving mortality for widows is zero: fewer widows have been created (because veterans' deaths are fewer) but those widows already in the population live longer.

Marital Status

The number of widows created by the deaths of veterans in different age categories depends, of course, upon the proportion of veterans who are married in those categories. In computing the additions to the 1975 base year widows' population from the deaths in the 1970 veterans population, a series of veteran specific marital status in 1970 values were used.

For projecting the additions to the widows' population in the period from 1975 to 2000, however, the marital status factors chosen were those for the U.S. white male population in 1975. It was assumed that these rates remain constant for a constant age over that period. There has, however,

been a decline in recent years in the proportion of people married at specific ages, due principally to the postponement of marriage and to higher divorce rates.

Whether this decline will continue, and at what rate, is uncertain. To test the effect of the possible declines in the proportion of married persons, the projections were also made under the rather extreme hypothesis of a decline of 20 percent (over 25 years) in the proportion of married males in all age groups. For example, the proportion of married veterans aged 63-67 would go from 82 percent to 65 percent. This hypothesis was intended to establish an upper limit on the effect of changes in marital status since the 25-year decline might well be less than 20 percent, especially for the older age groups where most of the deaths occur.

The results of this change in marital status are shown in Table IX-J. The overall effect is to produce only about 7,078,000 widows by the year 2000 compared to 7,900,000 widows under the standard marital status assumptions, a reduction of about 11 percent. The number of veterans does not change since, within the degree of approximation of the model, we can assume that mortality rates are the

same for married and unmarried individuals.

Other Factors

The simplifications in the model, referred to as "structural," have little effect upon the accuracy of the projections. By assuming all veterans to be males, we slightly overestimate the number of veteran deaths, since females on the average live longer than males. This assumption also leads to a very small overestimate of the number of widows (surviving spouses). Therefore, the longevity of those widows who are indeed widowers is overestimated. The number of female veterans over 65, however, is only two percent of the total over 65 veteran population. So these overestimates are negligible.

The assumption that widows are three years younger than their spouses at the time of the spouse's death will result in an overestimation of the ages of some widows and an underestimation of the ages of others. These differences should cancel each other out.

IV. LONG-RANGE FUTURE COST ESTIMATES

In order to estimate the long-range future costs of the pension program, two major factors must be considered in addition to the size and age composition of the potentially eligible population which was discussed in the previous section. These additional factors are (1) the future income characteristics of the potential eligibles (because this is a need-based program) and (2) the future form of the pension program (eligibility requirements, benefit levels, etc.). The detail and complexity of these factors necessitate the use of a computer model to describe the pension system and its cost in the future. In estimating future incomes, for instance, the current and expected changes in work patterns by age and sex, such as those which will result in more workers receiving social security payments and in workers receiving higher amounts than in the past, must be taken into account. Allowances for future changes in the form of pension program must consider, for example, what type of adjustment, if any, will be made to the program to compensate our increases in the cost-of-living.

A computer simulation model of the pension program for new law pensioners, excluding "children alone", for the years 1980, 1985, 1990, 1995, and 2000 has been developed. Important components of this model, which estimates the future numbers of pension recipients and the total pension costs, are the following data and assumptions:

DATA

- Population of potential eligibles.
- Distributions of income from a sample of current pension recipients.

ASSUMPTIONS

- Proportion of future population of potential eligibles who will qualify for pensions in the future.
- Type and amount of future changes in income.
- Treatment of future cost-of-living (COL) adjustments to the current program.

Cost estimates for hypothetical changes to the current pension law other than COL adjustments are not presented in this report. (The long-range model can be adapted to make such estimates for certain types and timing of proposed changes.) The results of the model, run with an initial set ("Series 1")

of values for the assumptions, are presented here. Estimates of the current program in the future provide a base against which proposed changes to the program can be measured.

Future COL Adjustments to Current Pension Program

The three cost-of-living related variations to the current program are:

- No cost-of-living adjustment.
- "Intermediate" cost-of-living adjustment.
- Maximum cost-of-living adjustment.

The no cost-of-living (COL) adjustment version (current law) assumes that the pension program with its base rates, income limits, and formula for reducing pension due to other income will remain frozen at 1978 levels. Over time, if historical patterns of inflation continue, pension payments for recipients with other sources of income which keep up with inflation will decrease as the countable non-pension income increases. Eventually many current recipients will be terminated and large numbers of future applicants will not qualify for pension due to excess income. That the pension program in its 1978 form will still be in force in the year 2000 AD is not a realistic assumption. For short periods

into the future, however, the no COL estimate can be taken as a lower bound on the future costs of the current pension program (i.e., pension costs and numbers of recipients can be safely assumed to be greater than these estimates). Assuming continuation of the pension program, this version of the program provides an unrealistically low value for longer periods (more than five to ten years, for example) because following the policy of freezing the pension program in its 1978 form would be tantamount to phasing out the program over more than a 25-year period. The results of costing this version on the computer model show, for example, that by the year 2000 the number of recipients would be about 1,007,000 and their average annual pension in year 2000 dollars would be $1,042, which in terms of purchasing power would be about equal to $400 today.

The "intermediate" COL adjustment version corresponds closely to "current practice" in recent years. In this version it is assumed that for the years following 1978 the pension program will be adjusted for COL each year by legislative action which increases both the base pension payment and the maximum limit on countable income by a percentage equal

to the percentage increase over the year in the Consumer Price Index (CPI). The effect of such an adjustment would be to increase the pension paid to those having no income by a percentage equal to the amount of the CPI increase. For those recipients having other sources of income the result for most would be, depending on the amount of countable income, either an increase in the pension payment of less than the CPI percentage or, for those with high incomes, a decrease in pension payment. Recipients with other countable income which remains constant may experience an increase in pension payment greater than the CPI percentage increase. Pensioners currently on the rolls would not be terminated for income reasons unless they were near the maximum income limit and their countable income increased at a rate greater than the increase in the CPI. One result of applying the intermediate COL adjustment method over a period of years is that the range of countable incomes for which pensioners receive the minimum pension payment ($5/month or $120/year) becomes larger and larger. This leads to a continuing increase in the proportion of total recipients who fall in this category. The point in countable income at which pensioners' payments drop to the minimum level varies

for each of the four beneficiary groups (veterans alone, veterans with dependents, widow(er)s alone, and widow(er)s with dependents) because the pension law specifies differences by group in the base payment amount and the marginal tax rates on countable income.

The maximum COL adjustment version of the pension program assumes that for each year after 1978 not only the base rates and the maximum income limits would be increased by the same percentage as the increase in the CPI, but also that the break points in the table used to determine the marginal tax rate on countable income will be increased by this percentage. The effect of this adjustment upon recipients with no countable income or with countable income which increases at the same rate as the CPI is the same if the pension payment itself were indexed to the CPI. For recipients with other countable income which does not keep up with inflation, the pension will increase at a rate greater than that which would occur if the pension payment were indexed. Thus the maximum COL adjustment perpetuates current differences in aggregate income (pension payment plus all other income) between recipients with other income and those whose sole or major resources is the pension payment.

The intermediate COL method, on the other hand, tends slowly to reduce the difference. This occurs because with the intermediate COL method the combination of (1) a fixed table of marginal tax rates and (2) income increasing with inflation results in higher average tax rates on countable income. This higher average tax rate on countable income applied against rising pension base payments causes pension payments of those with high income to increase more slowly or even to decrease by comparison to the pensions of those with little or no income. The number of pension recipients under the maximum COL adjustment will be the same as for the intermediate COL adjustment, because the maximum income limit is the same under both systems. The pension payment, however, will be higher under maximum COL for recipients with offsetting countable income.

In the same sense that the no COL adjustment assumption provides a lower limit to near-term future pension costs under the current pension system, the maximum COL adjustment provide an estimate of the upper bound of the future costs of the current program.

In computing the future pension costs, the following values for the expected increase in the CPI are used:

Year	Annual Rate of Increase (Percent)
1978	6.0
1979	6.0
1980	5.5
1981	4.4
1982-1985	4.1
1986-2000	4.0

The results of the computation for each of the five years being modeled are expressed in "current" dollars (dollars of whichever year is being considered -- e.g., costs in 1990 are given in 1990 dollars).

Number of Recipients

The number of pension recipients in future years depends principally upon three factors: the number of people in potentially eligible population, their incomes, and the income eligibility requirements of the version of the pension system being costed. The first two factors are dealt with together by the model.

Using the estimate of the potentially eligible population for the year 1975 (taken as a base year for the study) and the known number of recipients in 1975, the proportion of potential eligibles who qualified for the pension can be determined. This proportion is called the "recipient ratio." These recipient ratios differ depending on the beneficiary

category (veteran alone, veteran with dependents, widow(er) alone, or widow(er) with dependents) and the age of the recipients. These differences in the proportion of recipients are due both to the variability of income with age and beneficiary type and to the differences by beneficiary type in the maximum income limit in the pension law. To account for these differences the computer model divides the recipients into 28 groups: four beneficiary types and, within each of these, seven age groups (less than 50 years old, 50-54, 55-59, 60-64, 65-69, 70-74, and 75 and older). For each of these categories the recipient ratio in 1975 is estimated. Based on a one-percent sample of the 1975 recipients, the distributions of the amounts of different types of income among these pension recipients are also estimated.

The first step in projecting the number of recipients in a future year is to eliminate the portion of the potentially eligible population consisting of those who are almost certain not to satisfy the need criterion. The assumption is made that for a given category of beneficiary type and age in the future, the recipient ratio will be the same as or smaller than its value in the base year. The rationale for

this assumption is two-fold: (1) the belief that simple changes in the size of the underlying population will not have an effect upon the proportion who qualify for the need-based pension and, (2) the belief that any changes in incomes among the future population will be income increases which will reduce the proportion of recipients. In the model, therefore, the future potentially eligible population in each of the 28 age/beneficiary type categories is first reduced by multiplying it by the corresponding base-year recipient ratio to yield a subset of the potentially eligible population. Each of these subsets is called a "pool of potential recipients." The pool is an upper limit of the number of future recipients. Actual recipients are expected to be a subset of the pool.

The next step in modeling the number of future pension recipients is to take account of projected changes in income, in order to find out how many of the members of the potential recipient pool will actually qualify for a pension. Detailed information in the form of probability distributions of amounts of income is available (from the one-percent sample of 1975 recipients) for recipients' income classified into the following four categories: earnings, social security payments, other retirement income, and all other income.

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For veterans with dependents an additional four categories provide the same data for spouses' income. In order to project incomes in 1980, the income distributions (by beneficiary type and age group) of 1975 are taken as a starting point. These income distributions are then modified to account for expected changes. All incomes are adjusted for inflation using the factors cited earlier. In addition the following "real" changes (changes due to factors other than inflation) are incorporated into the model:

° An increase in the amount of social security payments received by the newly retired or disabled (due to higher average wages of recent retirees).

° A decrease in the percentage of recipients with social security payments equal to zero (due to expanded social security coverage).

° An increase (due to productivity increases) in earnings for those under age 65.

° An increase in the percentage of women with earnings and the amount of their earnings (due to increased participation by women in the labor force and enforcement of equal pay laws).

The amounts of the expected changes are based on estimates of the Social Security Administration. This procedure for modifying the income distributions is applied successively to generate the incomes for potential recipient pool members in 1985 from those in 1980, in 1990 from those in 1985, and so on.

The final step in determining the number of pension recipients in future years consists of simulating incomes (described by the generated income distributions) for potential recipient pool members, computing the "countable for pension purposes" income, and comparing this countable income to the maximum income limit for the version of the pension program being costed (the no COL, intermediate COL or maximum COL adjustment version). If the countable income is less than or equal to the maximum income limit for the beneficiary type being considered, the potential recipient pool member will qualify for the pension and so will be counted as a pension recipient. Generally not all potential recipient pool members will qualify because of the real (not due to inflation) increases projected for some income categories. These real increases have a cumulative effect so that the

farther in the future the estimates are made, the larger the number of potential recipient pool members who will not qualify. Under the no COL adjustment version of the pension program, the numbers disqualified due to income will be greatest.

The resulting number of expected recipients under each of the three versions of the pension program is shown by beneficiary type for the years 1980, 1985, 1990, 1995 and 2000 in Table IX-K.

Costs

At the same time that the computer model simulates future incomes for potential recipient pool members to see whether or not they qualify for pension payments, the value of the pension for those who do qualify is calculated. These individual pensions are summed over all 28 categories of recipients in each of the projected years giving annual estimates of the total costs. The costs are listed in Table IX-L and are displayed in Chart IX-M. The cost of the current program with no COL declines steadily due to a decline both in the amount of pension and, after 1985, in the numbers qualifying. The numbers qualifying increase for the intermediate and maximum COL versions of the program every

year. The average pension payment is higher, however, for the maximum COL adjustment version. After 1995 the average payment under the intermediate version begins to decline due to the cumulative effect of increasing numbers of recipients with very low or minumum payments.

ELIGIBLE WIDOWS AND VETERANS - IX-G1
(NUMBERS IN THOUSANDS)

	1975	1980	1985	1990	1995	2000
WIDOWS:						
Under 65	1,811	2,262	2,512	2,162	1,605	1,170
Under 65 as % of Base Year	100	125	139	119	89	65
Over 65	1,668	2,093	2,734	4,041	5,572	6,733
Over 65 as % of Base Year	100	126	164	242	334	404
TOTAL	3,479	4,355	5,246	6,203	7,177	7,903
Total as % of Base Year	100	125	151	178	206	227
VETERANS:						
Under 65	24,363	22,679	18,951	14,384	10,858	8,514
Under 65 as % of Base Year	100	93	78	59	45	35
Over 65	2,131	2,929	4,857	7,053	7,888	7,320
Over 65 as % of Base Year	100	137	228	331	370	344
TOTAL	26,494	25,608	23,808	21,437	18,746	15,834
Total as % of Base Year	100	97	90	81	71	60

ESTIMATED NUMBER IN THE POPULATION OF THOSE POTENTIALLY ELIGIBLE FOR VETERANS PENSION - IX-G2
(In Thousands)

Veterans

Age	1975	1980	1985	1990	1995	2000
L.T. 20	98	0	0	0	0	0
20-24	1,176	533	0	0	0	0
25-29	3,545	1,495	747	0	0	0
30-34	2,145	3,580	1,547	782	0	0
35-39	644	2,169	3,590	1,577	815	0
40-44	2,548	712	2,215	3,615	1,631	862
45-49	3,949	2,519	728	2,194	3,560	1,624
50-54	4,872	3,804	2,431	712	2,119	3,430
55-59	3,651	4,568	3,567	2,282	672	1,990
60-64	1,734	3,298	4,126	3,222	2,061	608
65-69	873	1,483	2,820	3,527	2,755	1,762
70-74	254	691	1,174	2,233	2,793	2,182
75-79	496	181	492	836	1,589	1,988
80-84	412	322	117	319	542	1,031
85-89	92	221	173	63	172	291
G.T. 89	5	32	81	75	37	66
TOTAL	26,494	25,608	23,808	21,437	18,746	15,834

Surviving Spouses

Age	1975	1980	1985	1990	1995	2000
L.T. 20	*	*	0	0	0	0
20-24	7	3	*	0	0	0
25-29	41	24	10	3	0	0
30-34	24	63	43	18	5	0
35-39	66	33	95	71	31	9
40-44	134	90	48	146	116	51
45-49	290	228	132	73	231	190
50-54	449	474	366	193	111	355
55-59	422	718	739	565	281	165
60-64	379	628	1,078	1,093	830	399
65-69	353	502	864	1,489	1,497	1,133
70-74	421	398	617	1,085	1,875	1,876
75-79	585	416	409	673	1,200	2,077
80-84	237	571	350	354	605	1,088
85-89	55	177	404	229	235	411
G.T. 89	16	30	91	211	160	149
TOTAL	3,479	4,355	5,246	6,203	7,177	7,903

*Less than 1,000.

TABLE IX-H

TYPES OF MORTALITY RATES

USED IN SENSITIVITY ANALYSIS

Combination	Mortality Rate	
	Veterans	Widows
1 (Preferred)	1975 U.S. white male population	1975 U.S. white female population
2 (Total U.S. Population)	1975 total U.S. male population	1975 total U.S. female population
3 (Worst Case)	1976 veteran specific white male population (NSF study)	1975 U.S. white female population
4 (Gradually Improving)	U.S. census improving mortality (1975-2000) white male population	U.S. census improving mortality (1975-2000) white female population

TABLE IX-I

MORTALITY SENSITIVITY

Mortality	Age Groups	Population as a Percentage of 1975 Population (Selected Years) 1975	1985	2000
Preferred Mortality (U.S. White Female And Male, 1975)	Widows of Veterans			
	Less than 65	100	139	67
	65 and Older	100	164	404
	Total	100	151	229
	Veterans			
	Less than 68	100	85	40
	68 and Older	100	190	432
	Total	100	91	62
Worst Case Mortality (U.S. White Female, 1975, and Veteran Specific - NSF Study, VAriant 7 Values for 1975)	Widows of Veterans			
	Less than 65	100	129	65
	65 and Older	100	174	433
	Total	100	151	241
	Veterans			
	Less than 68	100	86	40
	68 and Older	100	178	386
	Total	100	92	60
Gradually Improving Mortality (U.S. White Female and Male)	Widows of Veterans			
	Less than 65	100	138	65
	65 and Older	100	164	407
	Total	100	151	229
	Veterans			
	Less than 68	100	85	40
	68 and Older	100	191	443
	Total	100	92	63

TABLE IX-J

POPULATION OF WIDOWS AND VETERANS ASSUMING A 20 PERCENT DECLINE IN PROPORTION OF MARRIED VETERANS OVER THE 25 YEAR PERIOD

Age Groups	Population as a Percentage of 1975 Population — Year: 1975	1980	1985	1990	1995	2000	Population (Number) 2000
Widows							
Less than 65	100	125	136	114	82	59	
65 and Older	100	126	162	233	310	361	
Total	100	125	149	171	191	203	7,078,000
Veterans							
Less than 68	100	96	85	68	52	40	
68 and Older	100	121	190	327	422	432	
Total	100	98	91	83	74	62	16,530,000

ESTIMATED NUMBER OF PENSION RECIPIENTS[a] (000s) - IX-K

Pension Program (1978)	1980	1985	1990	1995	2000
1. No COL Adjustments in Future					
Vets Alone	388.1	289.4	351.2	259.9	176.5
Vets + Dep.	584.7	525.4	383.2	308.9	221.5
Widows Alone	870.3	846.2	683.5	575.8	502.9
Widows + Dep. [b]	145.4	133.2	119.0	114.9	106.8
Total	1988.5	1894.2	1536.9	1259.5	1007.7
2. Intermediate COL in Future					
Vets Alone	398.6	505.0	625.7	681.7	645.7
Vets + Dep.	614.6	726.4	802.8	870.2	967.5
Widows Alone	894.9	1104.7	1333.0	1606.1	1809.0
Widows + Dep. [b]	145.4	133.2	119.0	114.9	106.8
Total	2053.5	2469.3	2880.5	3272.9	3529.0
3. Maximum COL in Future [c]					
Vets Alone	398.6	505.0	625.7	681.7	645.7
Vets + Dep.	614.6	726.4	802.8	870.2	967.5
Widows Alone	894.9	1104.7	1333.0	1606.1	1809.0
Widows + Dep. [b]	145.4	133.2	119.0	114.9	106.8
Total	2053.5	2469.3	2880.5	3272.9	3529.0

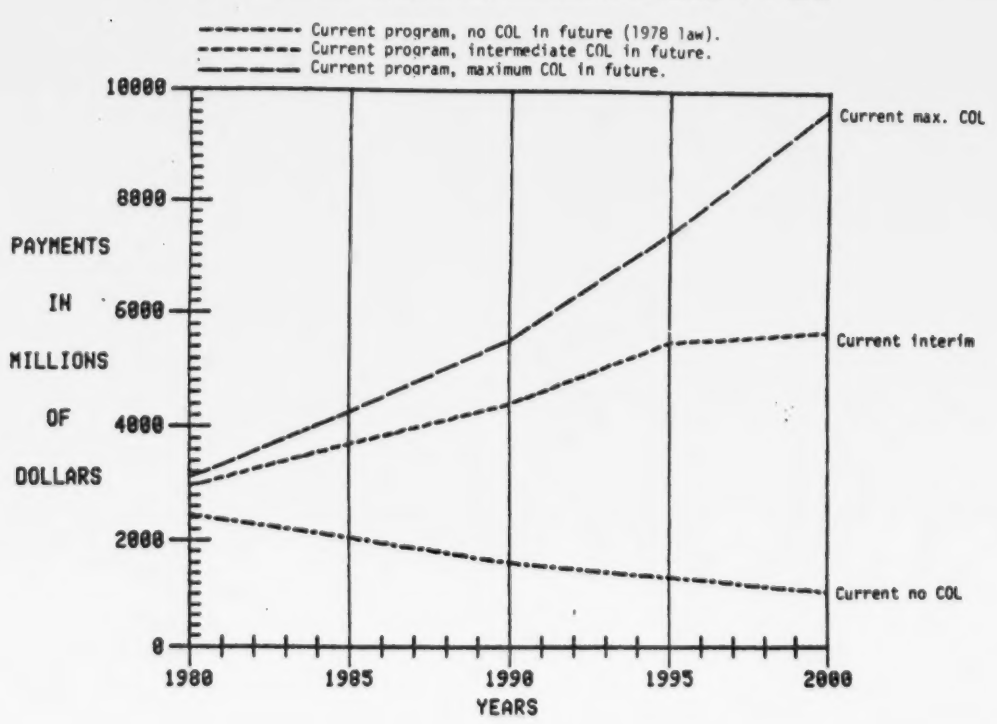
[a] Source: Long-Range Model, Series I.
[b] Number of recipients in the widows + dependents category are the same for all programs due to minimum payment (equal to the child alone payment).
[c] Number of recipients (but not their pensions) is the same for intermediate COL and maximum COL programs since the upper income limit is the same in both programs.

PENSION COSTS ESTIMATED BY THE LONG-RANGE MODEL (SERIES 1)-IX-L

Pension Program (1978)	Annual Costs[a/] (Millions of Dollars) Year 1980	1985	1990	1995	2000
1. With No Future COL Adjustments	$2,453	$2,049	$1,596	$1,317	$1,050
2. With Intermediate COL Adjustment in Future	$2,971	$3,691	$4,395	$5,492	$5,678
3. With Maximum COL Adjustment in Future	$3,112	$4,248	$5,517	$7,432	$9,709

a/ Current dollars.

GRAPH OF PENSION COST ESTIMATES FROM LONG-RANGE MODEL (SERIES 1) - IX-M



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Calendar No. 949

95TH CONGRESS, 2d Session } SENATE { REPORT No. 95-1019

MILITARY CONSTRUCTION APPROPRIATION BILL, 1979

JULY 19 (legislative day, MAY 17), 1978.—Ordered to be printed

Mr. HUDDLESTON, from the Committee on Appropriations, submitted the following

REPORT

[To accompany H.R. 12927]

The Committee on Appropriations, to which was referred the bill (H.R. 12927) making appropriations for military construction for the Department of Defense for the fiscal year ending September 30, 1979, and for other purposes, reports the same to the Senate with various amendments, and presents herewith information relative to the changes made:

Amount of bill passed by House	$3,844,887,000
Amount of increase by Senate over the House	92,815,000
Total of bill as reported to Senate	3,937,702,000
Amount of 1979 budget estimate	4,253,000,000
Amount of 1978 appropriations	2,977,720,000
The bill as reported to the Senate:	
Under the budget estimate, 1979	315,298,000
Over appropriations for fiscal year 1978	959,982,000

29-010 O

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BACKGROUND

Purpose of the Bill

The Military Construction Appropriations Bill provides necessary funding for the planning, design, construction, alteration and improvement of military facilities worldwide, both for active and Reserve forces. It also finances the construction, alteration, improvement, operation and maintenance of all military family housing, including payments against past housing mortgage indebtedness. Certain types of community impact assistance are provided, as well as assistance to members who face loss on the sale of private residences due to installation realignments. The bill is also the source for the U.S. share of NATO Infrastructure construction costs.

The Budget Request

The fiscal year 1979 budget requests approval for a total program approaching $4.4 billion, requiring almost $4.3 billion in new budget authority/appropriations. The following table displays this request, and compares it with the current fiscal year and 1977 program:

MILITARY CONSTRUCTION PROGRAM REQUEST

[In thousands of dollars]

	Fiscal year—			Change, 1979/78
	1977	1978	1979	
Military construction	2, 391, 871	1, 856, 294	2, 740, 500	+884, 206
Active Forces	2, 200, 455	1, 680, 194	2, 581, 600	+901, 406
Guard and Reserves	191, 419	176, 100	158, 900	−17, 200
Family housing programs	1, 293, 980	1, 418, 527	1, 611, 000	+192, 473
Family housing, Defense	1, 290, 062	1, 411, 427	1, 598, 800	+187, 373
Homeowners assistance fund	3, 918	7, 100	12, 200	+5, 100
Total program	3, 685, 851	3, 274, 821	4, 351, 500	+1, 076, 679
Less financing adjustments	−224, 220	−289, 148	−98, 500	+190, 648
Budget authority	[1, 2] 3, 461, 631	[2, 3] 2, 985, 673	[2] 4, 253, 000	+1, 267, 327

[1] Includes $122,638,000 in supplemental appropriations.
[2] Plus additional sums to be appropriated for reduction of mortgage principal indebtedness. This is contract authority, not applicable to budget authority ceilings under the concurrent resolution. In fiscal year 1979, this amount is $119,200,000.
[3] Includes $7,953,000 in requested supplemental appropriations.

The fiscal year 1979 budget program is $1.1 billion above fiscal year 1978, but would require $1.3 billion more in appropriations due to a decrease in available financing. These offsetting resources resulted from favorable contract awards and prior year recoupments, and are not expected to accrue in fiscal year 1979 to the degree experienced over the past two years.

While the fiscal year 1979 program increases by one-third over 1978, this dramatic growth is somewhat misleading. Last year's

budget was characterized by a construction "moratorium," and appropriations were the lowest in several years. As such, the current budget actually represents a return to a more typical annual level. A more appropriate comparison with fiscal year 1977 demonstrates that, with the exception of necessary real growth under the Family Housing account, increases are less than would have resulted from normal inflation over the past two years.

Summary of the Bill

The Committee recommends a total of $3,937,702,000 in new budget authority/appropriations for fiscal year 1979 programs under its jurisdiction. Significant comparisons are noted below:

Fiscal year 1979 budget request: Budget authority	$4, 253, 000, 000
Committee recommendation for fiscal year 1979: Budget Authority	3, 937, 702, 000
Which is:	
Over new budget authority granted in fiscal year 1978 by	959, 982, 000
Under the budget request by	315, 298, 000
Over the House bill by	92, 815, 000

Relationship to Authorization

With the exception of planning and design effort, which is permanently codified in law, all items in this bill require annual authorization. Since the Authorization and Appropriations bills are not totally comparable in scope, however, the sums reported are not the same.

The recommendations of the Committee contained herein are entirely consistent with fiscal year 1979 authorization action. The table below attempts to reconcile recommended appropriations with the companion authorization measure (S. 3079):

[In thousands of dollars]

New authorization, fiscal year 1979 (S. 3079)	$3, 998, 432
Less:	
Ammunition production facilities	−34, 384
Family housing debt principal reduction	−119, 200
Plus:	
Authorization reductions still requiring funds	+16, 255
Items previously authorized	+19, 733
Planning and design	+197, 700
Defense access roads	+6, 000
Minor construction (Guard and Reserves)	+9, 500
Authorization baseline	4, 094, 036
Recommended	3, 937, 702
Difference	−156, 334

Compliance With Section 308 of the Budget Control Act

Section 308(a) of the Budget and Impoundment Control Act of 1974 (Public Law 93-344) requires that the Committee include in its report a comparison of its recommendations with levels contained

in the First Concurrent Resolution. Appropriate data are reflected below:

BUDGETARY IMPACT OF H.R.12927 [1]

[In millions of dollars]

	Budget authority		Outlays	
	Committee allocation	Amount in bill	Committee allocation	Amount in bill
I. Comparison of amounts in the bill with the committee allocation to its subcommittees of amounts in the 1st concurrent resolution for 1979: Subcommittee on Military Construction	4,200	3,938	3,400	3,396
II. Summary of functional category of 1979 budget amounts recommended in the bill: 050—National defense		3,938		[2] 3,396
III. Financial assistance to State and local governments for 1979 in the bill		51		[2] 3
IV. Projections of outlays associated with budget authority recommended in the bill:				
1979				[2] 1,086
1980				1,121
1981				977
1982				478
1983				275
Future year				

[1] Prepared by the Congressional Budget Office pursuant to sec. 308a, Public Law 93-344.
[2] Includes outlays from prior year budget authority.
[3] Excludes outlays from prior year budget authority.

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COMMITTEE RECOMMENDATIONS

As previously noted, the Committee is recommending new fiscal year 1979 appropriations of $3,937,702,000. This is $315,298,000 below the budget request and $92,815,000 above House allowances. The basis for this recommendation is contained in succeeding paragraphs, for special interest items, and under the discussions pertaining to each individual appropriation. Detailed exhibits are appended at the end of this report which indicate the impact of Committee action by installation and State. A synopsis appears immediately below:

FISCAL YEAR 1979 MILITARY CONSTRUCTION APPROPRIATIONS

[In thousands of dollars]

Appropriation	Budget request	House allowance	Committee recommends
Military construction, Army	881, 900	628, 644	663, 228
Military construction, Navy	820, 900	683, 695	811, 074
Military construction, Air Force	639, 100	461, 703	507, 171
Military construction, Defense agencies	176, 300	183, 280	187, 730
Subtotal, Active Forces	2, 518, 200	1, 957, 322	2, 169, 203
Military construction, Army Reserve	34, 800	26, 900	38, 932
Military construction, Army National Guard	49, 700	43, 500	54, 677
Military construction, Naval Reserve	20, 400	16, 600	23, 000
Military construction, Air Force Reserve	12, 500	8, 900	13, 400
Military construction, Air National Guard	41, 500	35, 800	47, 590
Subtotal, Guard and Reserve	158, 900	131, 700	177, 599
Military family housing/homeowners' assistance	1, 575, 900	1, 569, 415	1, 590, 900
Planning and design	(198, 450)	186, 450	(198, 450)
Total, new budget authority	4, 253, 000	3, 844, 887	3, 937, 702

The net decrease of $315.3 million proposed by the Committee is actually the result of reductions in excess of $474 million, offset by the addition of nearly $159 million for necessary projects not contained in the budget request. The following sections elaborate on some of the more significant of these adjustments and on issues of specific concern to the Committee.

NATO Support Programs

The fiscal year 1979 budget contained a total of $712.3 million for overseas construction, of which $646.9 million was identified with Europe. Approximately half of the latter amount was identified with projects considered necessary to enhance the readiness posture of U.S. forces committed to the NATO alliance; the balance can be loosely categorized as effort required to support our ongoing presence in theater, such as barracks modernization, dependents' schools and certain on-base support facilities.

NATO ENHANCEMENT

The Committee has recommended a decrease of $318.2 million associated with projects intended to enhance the ability of U.S. forces to respond to NATO commitments, in consonance with reductions mandated by authorization action. This adjustment is without prejudice to the projects themselves, and certainly without prejudice to needed improvement in our readiness posture. Rather, the issue here is whether or not the United States should continue to unilaterally finance projects which are of direct benefit to the alliance.

Projects deleted fall into two categories: those that qualify for common Infrastructure funding, but which are prefinanced by the United States, and those which do not meet present criteria for joint NATO funding. The Committee has in the post enjoined the Department of Defense to expedite, as much as possible, the incorporation of NATO-eligible projects within the Infrastructure program, and to negotiate the expansion of criteria to incorporate presently ineligible efforts which obviously contribute to the collective posture of NATO. Progress, to date, has been negligible. Recent negotiations on a new long-range defense program—and the probability of a significantly increased near-term 5-year NATO program—now offer an appropriate vehicle for phased incorporation of required effort into the commonly funded and mutually supportive Infrastructure program.

The table below summarizes Committee action for NATO "enhancement" programs which have been denied funding due to failure of authorization.

[In thousands of Dollars]

	Adjustment
Various locations:	
Army POMCUS	−$56, 922
Ammunition storage	−50, 781
Ammunition upload facilities	−23, 269
Airfield protective facilities	−59, 600
Minimum essential air operations facilities	−23, 000
Semihardened logistics facilities	−6, 000
Chemical warfare protective facilities	−10, 000
Semihardened munitions storage	−8, 820
Contingency aircraft pavements	−40, 000
Tactical control improvements	−3, 975
Passive defense improvements (Air Force)	−1, 000
Manheim, Germany:	
Flight simulator (Coleman Barracks)	−1, 739
Aircraft maintenance hangar (Coleman Barracks)	−11, 981
Buedingen, Germany: Aircraft maintenance hangar	−2, 864
Hanau, Germany: Basic load site	−1, 204
Ansbach, Germany: Army airfield facilities	−1, 599
Vilseck, Germany: Pave roads/hardstands	−1, 622
Hohenfels, Germany: Pave roads/hardstands	−875
Naval Air Facility, Sigonella, Italy: maintenance hangar addition	−1, 250
Naval Communications Station, Nea Makri, Greece: electrical power improvements	−310
Ramstein Air Base, Germany: Hardened avionics maintenance facility	−4, 000
Decimomannau Air Base, Italy: Air Combat Maneuvering Instrumented Facility	−986
Incirlick, Turkey: Aircraft inst. landing and navigation facility	−516
RAF Mildenhall, United Kingdom: Jet fuel storage	−5, 902
Total	−318, 215

INFRASTRUCTURE BUDGET

In addition to the above specific adjustments, the Committee has also transferred funding—and budgetary responsibility—for the NATO Infrastructure program from Army to Defense appropriations. This action, also recommended by the House, reflects the Committee's desire that programs which benefit more than one department be justified as centralized Defense efforts. The Army will continue to be the Department's executive agent.

This transfer entails no change to the requested program scope of $90,000,000. While the House has proposed an increase of $20 million to demonstrate commitment to joint funding, the Committee has not followed suit. Even though the preceeding section clearly emphasizes the Committee's support for shared funding, the fact remains that the budget request represents the United States share of a program that has resulted from a series of international negotiations, with no practical chance of substantial modification at this point.

PARTICIPATION BY AMERICAN FIRMS

In its report, the House has called attention to the need to ensure that American firms and American products be afforded a competitive position for award of NATO contracts. The Committee strongly endorses this desire, while not necessarily proposing a "Buy America" policy, per se. There are factors other than direct product costs which must bear on the decision to procure a foreign or domestic commodity, such as the steel example cited by the House. In similar fashion, Defense components could do substantially more to increase the probability of successfully competing with foreign contractors. This can be done completely within the framework of NATO procedures, as in the case of American firms bidding as prime, rather than subcontractors, thereby eliminating the subjectivities of a foreign prime contractor. These situations are particularly controllable when the NATO project under consideration is prefinanced, such as has been the case with aircraft shelter construction.

ACCOUNTING PROCEDURES

It has come to the Committee's attention that certain accounting procedures used by the Department of Defense are inadvertently constraining the European construction program. Currently, an obligation against construction funds is made at time of a NATO Infrastructure contract award; the contract is usually stated in terms of a foreign currency, and the obligation is recorded at the exchange rate then prevailing. This obligation is then adjusted biannually as exchange fluctuations dictate.

While biannual adjustments have created no great problems in the past, the major currency revaluations of recent times have resulted in unnecessarily encumbering large amounts over the duration of contracts which could have been applied to other requirements. In essence, only two points in time are significant: obligation at prevailing rate at time of contract award, and final adjustment at prevailing rate when expenditures are made against obligations. For very practical reasons, the Department should seriously consider modifying its procedures accordingly.

Appropriations Availability

For the first time, this year's House bill proposes limitations on the availability of Military Construction appropriations. Fiscal year 1979 appropriations, as well as all others heretofore made, will now expire for obligation purposes on September 30, 1983—a 5-year limitation. While significant advantages to this change are not immediately apparent, and the question of additional accounting workload is unresolved, the Committee has found no compelling argument against the proposal, and therefore concurs with the House recommendation.

Planning and Design

The fiscal year 1979 budget request for planning and design totals $198,450,000; authorization is permanently codified in law, and requisite funds are appropriated annually. In its report, the House has identified what it perceives as serious problems in the management of the program, and has made several recommendations intended to achieve economies and increase congressional oversight. These include establishment of a new and separate appropriation for planning and design, suggestions for streamlining the reporting and design processes, and a recommended test for fully competitive selection of architect and engineering (A. & E.) contracts. A funding reduction of $12 million was made in anticipation of savings.

The Committee is in full agreement with the House that there is considerable room for improvement in this program, although it has some reservations over the methods proposed. It is questionable that savings in the amount of $12 million can be realized in the budget year. While $12 million appears to be a minor decrease in a $198 million effort, it must be weighed against two factors: First, there has been major emphasis in recent years to require that projects achieve a relatively advanced design status—30 percent—prior to submission for authorization and appropriation; this adds credibility to both the configuration of the project and to its cost estimate. Second, the appropriations request for fiscal year 1979 is already $21.3 million below that of last year. The Committee is therefore reluctant to further reduce the request, and has accordingly restored the House adjustment.

NEW PLANNING AND DESIGN APPROPRIATION

In order to increase congressional oversight of the planning and design account, the House has removed associated funds from individual service accounts, and has created a new and separate 2-year appropriation for this purpose. The Committee agrees that specific visibility would contribute much toward better oversight of the effort, but believes that the same end may be achieved without creating additional accounting and certification workload for a separate statutory appropriation.

As an alternative, the Committee is proposing restoration of planning and design funds to the individual service accounts, but as a discrete entity. For example:

MILITARY CONSTRUCTION, ARMY

For acquisition, construction, installation and equipment of temporary or permanent public works, military installations,

and facilities for the Army as currently authorized in military public works or military construction Acts, and in section 2673, 2674, and 2675 of title 10, United States Code, $000,000,000, to remain available until September 30, 1983. *Provided:* That of this amount, not to exceed $00,000,000 shall be available for study, planning, design, architect and engineer services in connection with military public works construction, as authorized by law, unless the Secretary of Defense determines that additional obligations are necessary for such purposes and notifies the Committees on Appropriations of both Houses of Congress of his determination and the reasons therefor.

This approach will insure specific visibility of planning and design funds, as well as limit their use to the purpose intended.

In the case of Guard and Reserve appropriations, and for family housing, the Committee is recommending that amounts for planning and design not be separately identified in statute. The small amount included under the family housing account ($750,000 out of a $1.6 billion appropriation) does not seem to warrant the distinction; the planning/design process for the Reserve components is somewhat more complicated, with State property and fiscal officers involved, which might interject complications. In these two instances, the Committee will consider amounts approved for the purpose of planning and design to constitute a "program" subject to reprograming limitations; these limitations are discussed further in a later section of the report.

COMPETITIVE SELECTION OF A. & E. CONTRACTS

The House has recommended that certain funds be set aside and used for a trial of fully competitive selection of A. & E. contracts. It was suggested that the Level Three Procedures used by the General Services Administration might be an appropriate model. The Committee has not concurred in the House proposal for two basic reasons: there is some concern that the critical design process, which determines the validity of the final product constructed, might be compromized in an atmosphere of heavy price competition. Second, the Committee does not believe that the extra expense entailed in level three procedures—basically geared to monumental projects—would be justified in the name of competition; further departures from standard practices may also be in variance with specific direction contained in secton 604 of annual Military Construction authorization acts.

Budget Justification Material

Detailed justification material in support of the President's budget was not officially transmitted to the Committee until nearly 6 weeks after the President made his presentation to the Congress. This situation is neither understandable nor tolerable, and the Committee joins with the House in directing that these necessary materials be forwarded expeditiously—concurrent with the official release of the President's budget message, if possible, but certainly not later than 10 days afterward.

The House has also requested that considerable additional detail be incorporated into the justification books to facilitate its review. While

the Committee is not in a position to assess or define the particular needs of any other committee, current DD 1390 and DD 1391 forms were substantially revised 2 years ago based on the consensus of four committees tasked with the authorization and appropriation of Military Construction funds; in this fashion, justification materials were standardized to avoid proliferation, and common needs were met. If the House Appropriations Committee feels that certain further changes are required, the Committee suggests that this also be accomplished in concert with other involved parties.

Reprograming Criteria

In any given year, changing circumstances and/or other factors occasionally arise which dictate that a program be executed in a manner different from that justified to and approved by the Congress. Recognizing this, provisions have been made in statute and in annual authorization acts to permit a degree of flexibility in responding to changes in price and scope. The Committees on Appropriations, however, have been involved in this process only in a relatively limited way: Approval of reprograming for projects not originally in the budget or for projects designated of special interest. There has been no practical involvement in changes—some major—to "approved" projects or to efforts financed by Guard and Reserve appropriations.

While it is not the Committee's intent to impose unnecessary or substantial burdens upon those tasked with program execution, there appears to be a need to document reprograming procedures which will permit the Committee to perform its review and oversight responsibilities in a workable fashion. Accordingly, the following guidelines are established or reiterated concerning the reprograming of appropriated Military Construction funds:

Reprograming prohibited.—Funds may not be reprogramed for a project or effort previously denied—as opposed to reduced—by the Congress, nor may reprograming be used to initiate new programs of major scope or to initiate base realinement actions when such larger efforts have not been addressed by the Congress. Excluded from this restriction are replacement-type projects proposed under 10 United States Code 2673.

Prior-approval reprograming.—Under the following circumstances, funds may be reprogramed with the express prior approval of the Committee:

1. For replacement projects falling under the statutory authorization of 10 United States Code 2673, regardless of amount:

2. For projects proposed, regardless of amount, under authority of sections 102, 202, and 302 of annual authorization acts, or their equivalents under subsequent acts;

3. For increases to currently approved projects when such increase exceeds 20 percent of the amount previously approved for the project by the Congress, or $1,000,000, whichever is lesser;

4. For any increase, regardless of amount, to a project previously reduced by the Congress, or for any project or effort which has been designated of special interest to the committees;

5. Under lump-sum appropriations for the Guard and Reserve components, for any project, regardless of amount, which was not among those justified to and approved by the Congress, or for an increase to an approved project which exceeds 20 percent;

6. For any increase to any subdivision of the Family Housing, Defense appropriation, the term "subdivision" meaning individual construction accounts for the several services and Defense agencies, debt payment in total, and transfer accounts within the lump-sum amount appropriated for operation and maintenance;

7. Within the amounts authorized and appropriated for minor construction, for any transfer of funds between the amounts approved, in total, for the category of exigent or urgent minor construction, and that category considered elective.

Notification reprograming.—The Department and Services may reprogram funds under the following conditions without the express prior approval of the Committee, provided that notification is made:

1. For projects proposed under emergency construction authority granted to the Secretary of Defense under section 402, or its equivalent, of the annual Military Construction Appropriation Act;

2. For increases to any approved project when such increase does not exceed the lesser of 20 percent of approved value or $1,000,000.

In the main, the above guidelines simply formalize de facto procedures which have been in operation for some years; in other cases, such as for the Guard and Reserve and dollar thresholds, the procedures are new. The Committee believes that this formalized understanding will facilitate its oversight of program execution without creating an undue burden upon the Department.

Minor Construction

Commencing in fiscal year 1979, new procedures will be in effect governing execution of the minor construction program. With the exception of Guard and Reserve and family housing appropriations, a lump sum has been authorized for minor construction for each of the services and the Defense agencies. These lump sums assume, and were justified on the basis of, estimates in total for exigent—emergency—construction and numerous other specific elective projects costing below $400,000 each.

The Committee has, for some time, maintained that these revised procedures must not result in the dissipation of amounts set aside for emergent requirements. By its nature, exigent or emergency construction cannot be finitely estimated, so budget requests have been largely based upon past experience; the Committee has traditionally supported these forecasts in order to insure that unforseen emergencies arising during the year would be effectively met. If estimates have any validity, amounts set-aside must not be decreased in favor of perhaps valid, but wholely elective, effort until it is determined that residual emergency funds will not be needed. Such a reprograming would require prior Committee approval before implementation.

For fiscal year 1979 the Committee is recommending a total of $118.3 million for minor construction programs of the Army, Navy, and Air Force. Of this amount, $66.4 million is for exigent construction,

considered an item of special interest by the Committee. These levels are displayed by service in the table, below:

[In thousands of dollars]

	Budget request		Adjustment	Recommended	
	Total	Exigent		Total	Exigent
Military construction, Army	31,712	(24,000)	+3,367	35,079	(24,000)
Military construction, Navy	40,337	(20,000)	−270	40,067	(20,000)
Military construction, Air Force	30,353	(18,000)	+350	30,703	(18,000)
Military construction, Defense agencies	13,384	(4,400)	−400	12,984	(4,400)
Total	115,786	(66,400)	+3,047	118,833	(66,400)

Panama Canal Treaty Implementation

The House included language in its report that prohibited the Department of Defense from using emergency construction authority for any projects related to the Panama Canal Treaty. That body felt that such efforts should be the subject of hearings and the normal appropriations process.

The Committee strongly believes that any major project, other than emergency replacement of damaged facilities, should be deliberated as part of the normal budget process. In this context, there is full agreement with the principle underlying House direction. The matter at hand, however, is somewhat of an exception. Throughout debate on the Panama Canal Treaty, considerable discussion occurred over the costs which would face the U.S. Government, among them some $43 million in Military Construction funds. The Committee was advised by the Army as early as last fall that approximately $3.5 million would be required for that Service in fiscal 1979. Testimony during this year's hearings confirmed that funding in some amount would be required during the budget year, and that the proposed method of financing would be use of emergency construction authority.

Another consideration pertains to availability of funds within the required time frame. To meet certain transfer stipulations in the treaty, construction of facilities at receiving locations must begin in approximately December of this year; realistically, action on a budget supplemental would not be completed by then.

It is fairly certain that witholding Military Construction funds will not stop implementation of the treaty, and it certainly does not absolve the United States from its treaty obligations.

Given present circumstances, the Committee believes that the Department should be permitted to use available fiscal year 1979 construction resources for those projects which must be funded prior to the time in which a supplemental could be enacted, but that such use should be in the context of a prior-approval reprograming. This alternative will allow for review of the specific qualifying projects required in a responsive manner.

Real Property Maintenance

The Committee shares the concern, expressed by the House, that additional emphasis needs to be placed on decreasing the backlog of real property maintenance. It is not, however, in agreement with the

House approach toward stimulating maintenance by denying required construction effort: a total of $25.9 million was reduced, offset by an increase of $15 million to family housing operation and maintenance.

The House analysis implies that funds budgeted for real property maintenance have not been emphasized by the Department, and have also been subject to reprograming. In reality, operation and maintenance appropriations for facility repair have risen dramatically in recent years, and reprograming is severely constrained by congressionally mandated statutory appropriation floors. This is not to say that more cannot be done, but it should be clear that additional incentives are not needed, and that deferral of required replacement construction would be counterproductive. The Committee has accordingly restored these reductions.

As to the suggested increase to family housing real property maintenance, it should be noted that the budget request constitutes an almost 10 percent growth over fiscal year 1978, and that last year's base itself was a significant increase over past levels. The Committee feels that emphasis on this area would be better served by imposing a maintenance floor—to insure that approved amounts are spent for this purpose—rather than additional appropriations. Such a statutory floor has been recommended in the amount of $635,000,000.

Contingent Appropriations

Numerous projects within the fiscal year 1979 request are for projects at activities which are potentially affected by base realinement studies now underway. The authorization bill makes approval of these projects contingent upon announcement of realinement decisions and certification to Congress that the planned effort remains valid and is in consonance with the announced decision. Accordingly, the Committee has recommended appropriations for the following projects, in the designated amounts, subject to the same condition: that funds may not be obligated until it is certified in writing to the Committee that the effort remains valid in light of final realinement decisions.

[In thousands of dollars]

Military Construction, Army	$24, 725
Fitzsimmons Army Hospital, Colo.: Energy control system	1, 436
Fort Jackson, S.C.:	
Energy monitoring/control system	3, 300
Convert to high pressure sodium light	234
Fort Monroe, Va.: Regional sewage plant upgrade	550
Fort Sill, Okla.: Trainee barracks complex	17, 300
Fort Bliss, Texas: Dental clinic	1, 905
Military Construction, Navy	14, 595
Navy Public Works Center, Great Lakes, Ill.:	
Boiler mods	2, 150
Building alterations	80
Heating, vent., air conditioning	230
Fuel storage	1, 350
Marine Corps Recruit Depot, Parris Island, S.C.: Bachelor enlisted quarters	4, 000

[In thousands of dollars]

Commandant, Naval District Washington, D.C.:	
Administrative office	$1,350
Administrative office	2,200
Administrative office	585
Naval Training Center, San Diego, Cal.: Academic instruction building modernization	850
Naval Hospital, Quantico, Va.: Medical/dental clinic	1,800
Total	39,320

MILITARY CONSTRUCTION, ARMY

1978 appropriations	$527,769,000
1979 budget estimate	881,900,000
House allowance	628,644,000
Committee recommendation	663,228,000

The Budget Request

The fiscal year 1979 budget request for the Army is $881.9 million, based upon a requested program of $917.1 million. This represents a 67 percent increase in appropriations and a 48 percent growth in planned effort. A brief summary of the program follows:

MILITARY CONSTRUCTION, ARMY

[In thousands of dollars]

	Fiscal year—		
	1978 estimate	1979 requested	1979/78 change
Major construction, inside United States	246,019	[1] 453,815	+207,796
Major construction, overseas	194,350	276,885	+82,535
NATO infrastructure	85,000	90,000	+5,000
Planning and design	66,400	67,400	+1,000
Minor construction	26,000	[1] 24,000	−2,000
Defense access roads		5,000	+5,000
Total, budget program	617,769	917,100	+299,331
Offsetting financing	−90,000	−35,200	+54,800
New budget authority/appropriation	527,769	881,900	+354,131

[1] For comparability with fiscal year 1978, the major construction category includes $7,712,000 which is actually minor construction under new definitions. The latter category will reflect a total of $31,712,000 in subsequent tables.

The major element of growth in the budget program is in the area of major construction within the United States. This essentially reflects lifting of last year's "moratorium" on domestic construction. Significant increases are also apparent in the overseas program, the majority of which is associated with a concerted effort to enhance readiness in the NATO theater.

Committee Recommendation

The Committee is recommending new appropriations of $663,228,000 for fiscal year 1979 construction effort in support of the Army's active forces. This is $218,672,000 below the budget request, but

$34,584,000 above House allowances. A comparison is displayed below by major command:

MAJOR COMMAND SUMMARY

[In thousands of dollars]

	Budget request	House allowance	Committee recommendation
Inside the United States:			
U.S. Army Forces Command	228,331	213,455	214,405
U.S. Army Training and Doctrine Command	82,574	75,725	93,859
U.S. Army Material Development and Readiness Command	107,771	101,250	89,674
U.S. Army Communications Command	8,926	8,926	8,926
U.S. Military Academy	12,313	12,265	12,313
U.S. Army Health Services Command	4,960	4,960	4,960
U.S. Army Military Traffic Management Command	1,228		1,226
Total, inside United States	446,103	416,581	452,365
Outside the United States:			
8th U.S. Army	9,490	8,580	7,580
National Missile Range, Kwajalein	6,571	6,571	6,571
U.S. Army, Europe	260,824	193,902	104,433
NATO infrastructure	90,000		
Total, outside United States	366,885	209,053	118,584
General support programs:			
Minor construction	31,712	31,110	35,079
Planning and design	67,400	(64,400)	67,400
Defense access roads	5,000	5,000	5,000
Total, general support program	104,112	36,110	107,479
General reduction		−17,900	
Grand total, Army program	917,100	643,844	678,428
Offsetting available financing	−35,200	−15,200	−15,200
Budget authority/new appropriation	881,900	628,644	663,228

Committee adjustments entail decreases of $280.4 million, much of which relates to NATO enhancement discussed earlier, offset by increases of $41.8 million for 15 additional projects. Appropriations have also been increased by $20 million to compensate for receipts from NATO which are credited against Infrastructure program costs; the latter have been transferred to the "Defense Agencies" appropriation. A discussion by major command follows.

U.S. ARMY FORCES COMMAND

The budget request for Forces Command, at $228.3 million, supported numerous projects at 19 locations. Committee adjustments, noted below, result in an approved program of $241.4 million, a net increase of $13.1 million.

Installation and project	*Thousands*
Fort Bragg, N.C.: Tactical equipment shop	−$386
Fort Campbell, Ky.: Boiler conversion	−2,699
Presidio of San Francisco, Calif.: Energy control system	−368
Fort Riley: Kans.: Fuel conversion	−1,886
Fort Hood, Tex.:	
Barracks and dining facility modernization	+7,115
Tactical equipment shop	+2,314
Fort Lewis, Wash.: Electrical distribution system	+1,776
Fort Richardson, Alaska:	
Engine exhaust system	+1,974
Barracks/dining facilities modern	+5,234
Net adjustment	+13,074

Fort Bragg.—The Committee action would result in a total of 5,894,000 for a tactical equipment shop and facilities, in lieu of 6,280,000 requested.

Fort Campbell.—Since a basewide energy study is currently under-ay, the Committee has deferred conversion of boilers from gas to as/oil pending its completion.

Presidio of San Francisco.—The proposed energy monitoring and ontrol system is denied, based upon more efficient energy saving evices now under study for that location.

Fort Riley.—As was the case with Fort Campbell, proposed con-ersion from gas to dual (gas/oil) capability should be deferred until ompletion of a basewide energy study now underway.

Fort Hood.—The Committee has added two projects for this in-tallation. The first involves modernization and upgrading of existing arracks and dining facilities to current standards for 492 enlisted nen. The second project, a tactical equipment shop and supporting acilities, will replace deteriorated World War II temporary buildings ith a permanent shop to accommodate an armored division tank attalion.

Fort Lewis.—$1.8 million has been added to upgrade the electrical istribution system, reduce line losses and increase load capacity, and ecrease maintenance and repair costs. The present system is nearing bsolescence.

Fort Richardson.—Two projects are recommended for addition: an ngine fume exhaust system for vehicle bays of motor repair shops: urrent systems do not meet National Life Safety Code or OSHA equirements. The barracks and dining facility project will upgrade two ermanent buildings to current living standards for 780 enlisted mens

TRAINING AND DOCTRINE COMMAND

The Committee recommends a total of $93,859,000 for project upporting the Army's training establishment. This is a net increase f $11.3 million above the budget request:

Installation and project	*Thousands*
ort Sill, Okla.: Fuel conversion	−$2,225
ort Benning, Ga.: Small arms maintenance facility	+3,645
ort Eustis, Va.:	
Cargo handling training facility	+3,666
Pier utilities	+740
ort Knox, Ky.: Aircraft control tower	+702
ort Rucker, Ala.: Upgrade stagefields	+2,280
ort Leonard Wood, Mo.: Medical supply warehouse	+2,477
Net adjustment	+11,285

Fort Sill.—Requested conversion of boilers is deferred pending ompletion of overall base energy studies.

Fort Benning.—Fort Benning, home of infantry training, does not urrently have an adequate facility for storage and maintenance of mall arms. The proposed project will correct this situation and support oth existing ranges and those proposed for construction.

Fort Eustis.—The projects added by the Committee will provide a acility representing a typical modern container ship, used for training, as well as provide shore electric power and potable water for Army essels berthed at Fort Eustis.

Fort Knox.—The existing aircraft flight control tower was built in 1941, and does not conform to modern operational and safety standards. The addition of $702,000 will provide a safe and adequate facility for Godman Army Airfield.

Fort Rucker.—This project will provide adequate facilities for student pilots at 6 of 15 stagefields; this entails briefing, waiting and latrine facilities, widened runways and upgraded airfield lighting.

Fort Leonard Wood.—An additional $2.5 million is proposed to replace existing substandard World War II temporary mobilization-type buildings used to store valuable and perishable medical equipment and supplies. The project will also consolidate this function from numerous scattered locations.

ARMY MATERIAL DEVELOPMENT AND READINESS COMMAND

The Material Development and Readiness Command represents the Army's industrial base. The budget request, at $107.8 million, supported projects at 20 locations. The Committee is recommending funds in the amount of $89.7 million, a decrease of $18.1 million:

Installation and project	*Thousands*
Iowa AAP, Iowa: Explosive waste incinerator	−$527
Kansas AAP, Kansas.: Explosive waste incinerator	−504
Milan AAP, Tenn.: Explosive waste incinerator	−602
Redstone Arsenal, Ala.: Explosive waste incinerator	−509
Sunflower AAP, Kansas.: Explosive waste incinerator	−763
Watervliet Arsenal, N.Y.: Facilities modernization	−25,021
Cornhusker AAP, Nebr.: Contaminated waste incinerator	+640
Anniston Army Depot, Ala.: Metalic finishing facility	+7,836
Red River Army Depot, Tex.: Quality assurance lab	+813
Sierra Army Depot, Calif: Ammo storage service facility	+540
Net adjustment	−18,097

Iowa, Kansas, Milan, Sunflower Army Ammunition Plants, Redstone Arsenal.—The Committee has deleted the request for an explosive waste incinerator at each of these installations based upon an apparent duplication of function with contaminated waste incinerators at the same locations.

Watervliet Arsenal.—The Committee has deferred all but $2 million of the requested $27,021,000 project to modernize this facility, since the approved increment—associated with demolition and site work—is all that need be physically performed in fiscal year 1979. This deferral is without prejudice to the intent of the project, however.

Cornhusker Army Ammunition Plant.—This project, for $640,000, is required to control air pollution while safely burning explosive contaminated waste material.

Anniston Army Depot.—$7.8 million has been added to the request to construct an addition to and modify an existing metal finishing building which was originally constructed in 1942 as a warehouse, and which is inadequate for its present mission.

Red River Army Depot.—The present mechanical calibration laboratory at Red River is located over a machine shop, producing excessive vibration, and other functions are dispersed and/or lacking in adequate environmental controls. The recommended project will consolidate these missions in an adequate facility.

Sierra Army Depot.—The Committee is proposing addition of $540,000 for construction of an adequate operations building in which to administer the ammunition storage, surveillance and inventorying mission of the depot.

[Outside the United States]

EIGHTH U.S. ARMY (KOREA)

The Committee is recommending approval for three of the four projects requested for Korea. The exception relates to proposed construction of a new milk reconstituting plant at K–16 Airfield; the mission should be accommodated by contract with a private concern or the Korean Government. A total of $7,590,000 is recommended for the remaining projects.

U.S. ARMY, EUROPE

Total funding of $104,433,000 is recommended for the Army's fiscal year 1979 construction program in Europe. This represents a dec ease from the budget request of $156.4 million, almost all of which is associated with deletion of unilateral financing of projects in support of NATO; this subject was addressed in some depth earlier in the report. The single exception relates to $3.5 million in POL projects which is more appropriately funded under minor construction. The table, below, displays those projects denied funding:

Installation and project	*Thousands*
POMCUS (various locations)	−$56, 922
Ammunition upload (various)	−23, 269
Ammunition storage (various)	−50, 781
POL pollution control (various)	−3, 535
Coleman Barracks:	
Flight simulator	−1, 739
Aircraft maintenance hangar	−11, 981
Buedingen: Aircraft maintenance hangar	−2, 864
Ansbach: Airfield facilities	−1, 599
Hanau: Basic load site	−1, 204
Vilseck: Pave roads/hardstands	−1, 622
Hohenfels: Pave roads/hardstands	−875
Net adjustment	−156, 391

NATO INFRASTRUCTURE

As discussed earlier in this report, the Committee has transferred funding for the Infrastructure program to the "Defense Agencies" appropriation. This is in consonance with the position that efforts which benefit all Services should be budgeted under a central Department of Defense program. This transfer entails no reduction to the requested amount of $90 million, and it is assumed that the Army will continue in its role of executive agent for the Department.

MINOR CONSTRUCTION

The Committee recommends a total of $35,079,000 for Army minor construction, an increase of $3,367,000 over the request. This increase,

however, is a function of adding $3.5 million associated with German POL projects (corresponding reduction under U.S. Army, Europe), offset by a reduction of $133,000 for a new boiler at Fort McNair; request withdrawn.

REQUEST APPROVED

The Committee has recommended approval of the budget, as requested, for the Army Communications Command; Military Academy; Health Services Command; Military Traffic Management Command; National Missile Range, Kwajalein; planning and design, and defense access roads funding.

MILITARY CONSTRUCTION, NAVY

1978 appropriations	$463,056,000
1979 budget estimate	820,900,000
House allowance	683,695,000
Committee recommendation	811,074,000

The Budget Request

The fiscal year 1979 budget request for programs of the Navy and Marine Corps is $820.9 million, which represents an increase of $357.8 million—or 77 percent—over amounts appropriated for fiscal year 1978:

MILITARY CONSTRUCTION, NAVY

[In thousands of dollars]

	Fiscal year—		
	1978 estimate	1979 requested	Fiscal years 1979/78 change
Major construction, inside United States	397,184	[1] 705,807	+308,623
Major construction, outside United States	27,572	[1] 44,793	+17,221
Minor construction	26,000	[1] 20,000	−6,000
Planning and design	72,500	49,300	−23,200
Defense access roads	5,000	1,000	−4,000
Total budget program	528,256	820,900	+292,644
Offsetting financing	−65,200		+65,200
New budget authority/appropriation	463,056	820,900	+357,844

[1] For comparability with fiscal year 1978, the major construction category contains $20,377,000 which is actually mino construction under new definitions. The latter category will be reflected at its actual total of $40,377,000 in subsequen tables.

Although the relative growth of the Navy's program is the largest of the three Services, it reflects only a few individual efforts of significant cost; the increase is basically spread throughout the shore establishment. Major highlights of the request include $39.1 million to establish a submarine base at Kings Bay, Georgia; $70.4 million for modernization at the eight Naval shipyards; $51.5 million for a new medical facility at Camp Lejeune, and over $95 million for numerous pollution abatement and energy conservation projects.

Committee Recommendations

New appropriations of $811,074,000 are recommended for fiscal year 1979, a decrease of $9,826,000 from the budget r ıest. This is $127,379,000 above amounts contained in the House bill. The table

below portrays the budget, House and Committee levels by major command:

MAJOR COMMAND SUMMARY

[In thousands of dollars]

	Budget request	House allowance	Committee recommendation
Inside the United States:			
U.S. Marine Corps	89,460	88,460	88,930
Office of Naval Research	5,400	5,400	5,400
Chief of Naval Operations	80,910	75,295	77,184
Commander in Chief, Atlantic Fleet	82,070	57,470	78,470
Commander in Chief, Pacific Fleet	102,570	68,870	98,970
Chief of Naval Education and Training	46,430	42,280	46,430
Bureau of Medicine and Surgery	69,830	67,330	69,830
Chief of Naval Material	206,860	215,470	220,180
Naval Telecommunications Command	2,470	2,470	2,470
Naval Security Group Command	540	540	540
Total, inside United States	686,540	623,585	688,404
Outside the United States:			
U.S. Marine Corps	4,500	4,500	
Commander in Chief, Atlantic Fleet	15,430	11,430	13,650
Commander in Chief, Pacific Fleet	4,640	4,640	4,640
Commander in Chief, Naval Forces, Europe	15,600	12,850	10,500
Bureau of Medicine and Surgery	960	960	960
Naval Telecommunications Command	890	890	890
Naval Security Group Command	1,663	1,663	1,663
Total, outside United States	43,683	36,933	32,303
General support program:			
Minor construction	40,377	40,377	40,067
Planning and design	49,300	(46,300)	49,300
Defense access roads	1,000	1,000	1,000
Total, general support	90,677	41,377	90,367
General reduction		−18,200	
Grand total, Navy program	820,900	683,695	811,074
Offsetting available financing			
New budget authority/appropriation	820,900	683,695	811,074

Adjustments to the requested Navy program include decreases to the budget of $37.8 million, offset by $28.0 million for additional programs at operating locations. A discussion by major command follows.

U.S. MARINE CORPS

Compared with a budget request of $89,460,000 for the Marine Corps, the Committee is recommending new appropriations of $88,930,000, a net decrease of $530,000. This relates entirely to reduction in authorization for the Marine Corps physical fitness center at Camp Lejeune, N.C.

CHIEF OF NAVAL OPERATIONS

For activities under the command of the Chief of Naval Operations, the Committee recommends a total of $77,184,000, a reduction of $3,726,000 from the budget request. This entails three adjustments. First, the request for facilities at the Naval Submarine Base, Bangor, Wash. is reduced by $385,000, basically a Navy reestimate of cost. Similarly, the request for Chesapeake Division, Facilities Engineering Command, administrative space is reduced by $95,000, to a revised

estimate of $585,000. Lastly, the planned acquisition of land at the Submarine Support Base, Kings Bay, Ga. is reduced in scope by $3.2 million, from $3,440,000 to $194,000.

COMMANDER IN CHIEF, ATLANTIC FLEET

The Committee is recommending a total of $78.5 million for Atlantic Fleet shore activities. This is a net decrease of $3.6 million from the request. This is also the net of two adjustments: an increase of $800,000 for an energy monitoring and control system at the Naval Air Station, Jacksonville, Fla., offset by a reduction of $4.4 million to the request for a drydock mooring platform at the Norfolk Naval Station. The latter adjustment was also contained in the House bill.

COMMANDER IN CHIEF, PACIFIC FLEET

The budget request for Pacific Fleet shore activities totaled $102.6 million; the Committee has recommended adjustments of $3.6 million, resulting in an approved program of $98,970,000. These adjustments include the addition of a $900,000 project for airfield pavement at the Naval Air Station, Lemoore, Calif., and a decrease of $4,500,000 to the $6 million request for utilities and pier upgrade at the Pearl Harbor Submarine base; the remaining $1.5 million for the utilities project will be required in support of Pacific deployment of SSN 688-class submarines.

CHIEF OF NAVAL MATERIAL

At $206.9 million, the request for the Navy's "industrial plant" constitutes the largest single element of the Navy budget. The Committee is proposing funding of $220,180,000, an increase of $13.3 million:

Installation and project	*Thousands*
Naval Fuel Annex, Casco Bay, Maine: Oil spill prevention	−$1,150
NARF, Jacksonville, Fla.: Energy monitoring/control system	−800
NAEC, Lakehurst, N.J.: Land acquisition	−340
Naval Shipyard, Pearl Harbor, Hawaii: Cafeteria	−590
Naval Weapons Station, Yorktown, Va.: Community center	−2,800
Naval Shipyard, Charleston, S.C.: Pipe shop	+7,200
Naval Shipyard, Long Beach, Calif.: Pipe shop	+6,700
NARF, Norfolk, Va.: Industrial waste treatment facility	+4,000
Naval Air Test Center, Patuxent, Md.: Runway upgrade	+3,100
Naval Supply Center, San Diego, Calif.: POL pipeline	+4,100
Naval Shipyard, Philadelphia, Pa.: Fire protection pump station	+1,200
Naval Surface Weapons Center, Dahlgren, Va.: Applied research laboratory	−7,300
Net adjustment	+13,320

Naval Fuel Annex, Casco Bay.—The project for oil spill prevention has been deferred, since its successful execution is contingent upon completion of another project.

Naval Air Rework Facility, Jacksonville.—Consistent with authorization action, this project has been transferred to the Naval Air Station, Jacksonville, under another command.

Naval Air Engineering Center, Lakehurst.—Estimates for the cost of necessary land acquisition have been updated from $480,000 to $140,000.

Naval Shipyard, Pearl Harbor, and Naval Weapons Station, Yorktown.—Projects for a cafeteria at the Pearl Harbor shipyard and for a community center at the Naval Weapons Station were deleted by the authorizing committee based on the opinion that these efforts should be financed from nonappropriated funds.

Naval Shipyards Charleston and Long Beach.—The Committee has added, respectively, $7.2 million and $6.7 million for pipe fitting shops at the Charleston and Long Beach shipyards. Both projects are well along in design status, and offer a major contribution toward industrial modernization.

Naval Air Rework Facility, Norfolk.—This activity is currently in violation of pollution standards by discharging untreated industrial wastes into the storm drainage system. The project recommended for addition will eliminate this hazardous situation and bring the facility into compliance with the law.

Naval Air Test Center, Patuxent.—This project will place an overlay on the facility's principal runway to correct a rapidly deteriorating condition that will soon lead to foreign object damage in aircraft engines.

Naval Supply Center, San Diego.—The Committee is recommending the addition of $4.1 million to construct two pipelines from Point Loma fuel annex to the NAS North Island Tank Farm, and from the tank farm to aircraft carrier piers. The present delivery of fuel by barge is both uneconomical and creates a potential pollution hazard from spills.

Naval Shipyard Philadelphia.—The project recommended for addition in this case is to insure an adequate and effective fire protection system for capital ships. Portable booster pumps are now in use, which is not a viable permanent solution to the requirement.

Naval Surface Weapons Center, Dahlgren.—The Committee is recommending concurrence with the House proposal to delete funding for a planned AEGIS combat systems support facility. In this action, the Committee is reiterating the position contained in its report on the fiscal year 1978 Defense Appropriations bill (Report 95–325, page 259):

> *AEGIS test site.*—The Committee recommends a reduction of $7,000,000 from the land based test site for the AEGIS radar system. The funds are budgeted for support of 180 Navy civilian employees acting as observers at the test site. The Navy's plan to move the test site to a Navy laboratory results in over $50,000,000 of duplicate work. The Committee does not support the duplicate test site.

[Outside the United States]

U.S. MARINE CORPS

The Committee is recommending deletion of the $4,500,000 request for construction of a bachelor enlisted quarters at the Marine Corps Air Station, Iwakuni, Japan. This is consistent with authorization action.

COMMANDER IN CHIEF, ATLANTIC FLEET

Requested funding for overseas Atlantic Fleet projects totalled $15,430,000; the Committee is proposing a level of $13,650,000, a decrease of $1,780,000. This reduction is associated with a $4.5 million project for runway approach lighting at the Naval Station, Keflavik, Iceland. This facility is jointly used by the Government of Iceland, and it is the Committee's belief that that Government should also share in the cost of needed, mutually beneficial improvements.

COMMANDER IN CHIEF, NAVAL FORCES, EUROPE

The Committee is proposing adjustments of $5.1 million to funds requested for CINCUSNAVEUR in fiscal year 1979; approved funding is $10,500,000. A request for berthing improvements for small craft ($2,350,000) and an air passenger terminal ($1,500,000) at Naval Station, Rota, Spain, have been denied because the requirement for berthing appears to solely benefit the Spanish Navy, and there is serious question on the need for the terminal, given redeployment of our Poseidon squadron in 1979. A reduction of $1,250,000 was also made for a maintenance hangar addition at the Naval Air Facility, Sigonella, Italy, in consonance with the Committee's overall actions on projects associated with NATO; this topic was discussed in greater depth earlier in the report.

MINOR CONSTRUCTION

Also in consonance with the Committee's actions regarding NATO, the request for minor construction has been reduced by $310,000 for planned electrical system improvements at the Naval Communications Station, Nea Makri, Greece. This results in a recommended total of $40,067,000 for minor construction effort in the United States and overseas.

REQUESTS APPROVED

The Committee is recommending approval of funding, as requested, for the Chief of Naval Research, Chief of Naval Education and Training, Bureau of Medicine and Surgery, Naval Telecommunications Command, and Naval Security Group Command, including both domestic and overseas projects, as well as budgeted overseas effort for the Commander in Chief, Pacific Fleet. Also approved, as requested, were the planning and design and defense access roads programs.

DREDGING PROJECT

At the time of Committee hearings on this appropriation, the Navy has announced plans to decommission the aircraft carrier *Lexington*, now utilized for pilot training at Pensacola, Fla. Recent developments on this matter have raised questions about the feasibility of such an action. Consequently, the Navy is directed to maintain current its planning for a dredging project at Pensacola harbor to permit the option of continued utilization of the Pensacola harbor for carrier training programs.

ALASKAN INTERTIE

The Committee was recently made aware of studies which have identified the need for an electrical and gas intertie between the Naval Arctic Research Laboratory (NARL) and the village of Barrow, Alaska. Power failure in this extreme arctic environment literally becomes a matter of life and death within a very short time, and a mutually supportive utility link between these two neighbors would provide safety in times of difficulty. It could also offer improved operating flexibility for both systems. Cost of construction of these interties is initially estimated at approximately $7.2 million.

Given the criticality of such a system in the harsh and isolated environment of the arctic, the Committee believes that the Navy should program for its construction at the earliest opportunity. In the interim, the Navy is directed to initiate planning and design effort so that the project—and its cost—will be reasonably definitized for later consideration by authorization and appropriation committees of the Congress.

MILITARY CONSTRUCTION, AIR FORCE

1978 appropriations	$406, 986, 000
1979 budget estimate	639, 100, 000
House allowance	461, 703, 000
Committee recommendation	507, 171, 000

The Budget Request

Requested fiscal year 1979 appropriations for the Air Force total $639.1 million. Compared with fiscal year 1978, this entails an increase of $232.1 million, as displayed below:

MILITARY CONSTRUCTION, AIR FORCE

[In thousands of dollars]

	Fiscal Year—		
	1978 estimate	1979 requested	1979/78 change
Major construction, inside United States	236, 156	[1] 388, 803	+152, 647
Major construction, outside United States	137, 385	[1] 205, 497	+68, 112
Minor construction	26, 000	[1] 18, 000	−8, 000
Planning and design	58, 400	55, 000	−3, 400
Total budget program	457, 941	667, 300	+209, 359
Offsetting financing	−50, 955	−28, 200	+22, 755
New budget authority/appropriation	406, 986	639, 100	+232, 114

[1] For comparability with fiscal year 1978, the major construction category contains $12,353,000 which is actually minor construction under new definitions. The latter category will be reflected at its actual total of $30,353,000 in subsequent tables.

Major elements of the requested program include $145.6 million to initiate construction support for the Space Transportation System; $166 million for a range of efforts designed to improve readiness of our forces committed to NATO; $50 million for alteration and improvement of enlisted quarters; and $34 million for various energy conservation measures at 26 locations.

Committee Recommendation

The Committee is recommending new appropriations of $507,171,000 for Air Force projects in fiscal year 1979. This is $131,929,000 below

the budget request, and $45,468,000 above House allowances, as displayed by major command in the following table:

MAJOR COMMAND SUMMARY

[In thousands of dollars]

	Budget request	House allowance	Committee recommendation
Inside the United States:			
Aerospace Defense Command	5,500	8,687	6,546
Air Force Logistics Command	48,680	55,690	56,720
Air Force Systems Command	29,333	29,333	30,393
Air Training Command	13,642	13,642	23,722
Alaskan Air Command	6,088	6,088	6,088
Military Airlift Command	14,700	7,390	18,241
Strategic Air Command	209,745	177,912	221,073
Tactical Air Command	47,804	49,304	54,447
United States Air Force Academy	635	635	4,635
Air National Guard	2,808	2,808	2,808
Total, inside United States	378,935	351,489	424,673
Outside the United States:			
Military Airlift Command	2,744	9,294	2,744
Pacific Air Force	23,226	23,226	16,963
Strategic Air Command	1,120	1,120	1,120
Tactical Air Command	718	718	718
United States Air Forces in Europe	175,204	90,103	2,850
Total, outside United States	203,012	124,461	24,395
General support program:			
Minor construction	30,353	30,353	30,703
Planning and design	55,000	(*2,000)	55,000
Defense access roads			1,350
Total general support	85,353	30,353	87,053
General reduction		−16,400	
Grand total, Air Force program	667,300	489,903	536,121
Offsetting available financing	−28,200	−28,200	−28,950
New Budget authority/appropriation	639,100	461,703	507,171

The proposed decrease of $131.9 million from requested levels actually represents reductions totaling in excess of $180.2 million—of which $165.8 million relates to NATO projects—offset by project additions of $48.3 million.

REQUESTS APPROVED

The Committee is recommending approval of funds, as requested, for the Alaskan Air Command, Air National Guard, planning and design, and overseas efforts for the Strategic Air Command, Military Airlift Command and Tactical Air Command.

AEROSPACE DEFENSE COMMAND

The fiscal year 1979 request for the Aerospace Defense Command was $5.5 million; the Committee has recommended addition of one project—a $1,046,000 radar approach control facility at Tyndall AFB, Fla.—for an approved total of $6,546,000.

AIR FORCE LOGISTICS COMMAND

A total of $56,720,000 is recommended for Logistics Command projects, an increase of $8,040,000 above the budget request. Three

projects have been added. The first is $4,680,000 for replacement of a dangerously deteriorated taxiway at Hill AFB, Utah; the second, at $860,000, will provide an energy monitoring and control system at Newark AFS, Ohio. Lastly, $2,500,000 has been provided for pollution abatement—control of contaminated water—at Robins AFB, Ga.

AIR FORCE SYSTEMS COMMAND

The Committee has also recommended a net increase to the budget request for the Systems Command, from $29.3 million to $30.4 million. This entails a reduction of $620,000 for the Joint Surveillance System at various locations, and the addition of $1,680,000 for two projects at Eglin AFB: $815,000 for two aircraft pads for safe munitions loading and unloading, and $865,000 for alteration of bachelor enlisted quarters to current standards for 136 lower-graded personnel.

AIR TRAINING COMMAND

The Training Command budget request totaled $13.6 million; the Committee recommends the addition of three projects, an increase of $10,080,000, for a revised level of $30.4 million. The first project, at $820,000, is for an energy monitoring and control system at Keesler AFB, Miss. The second, also at Keesler, is for a logistics storage and vehicle maintenance complex; this $7,015,000 effort will consolidate numerous locations into properly sized and configured facilities. The last project, $2,245,000 for a vehicle maintenance complex at Lackland AFB, Tex., will replace 1942–43 vintage substandard maintenance facilities.

MILITARY AIRLIFT COMMAND

Committee action on the request for domestic Military Airlift Command projects involves the addition of two projects and $3,541,000 to the budget. $2,041,000 has been provided for an energy monitoring and control system at McGuire AFB, N.J., and $1,500,000 has been added for a squadron operations facility at Scott, AFB, Ill. The latter supports an aeromedical flying squadron now housed in substandard facilities. The total approved for the Military Airlift Command is $18,241,000.

STRATEGIC AIR COMMAND

The Committee is recommending fiscal year 1979 funding in the amount of $221,073,000 for the Strategic Air Command. The largest element of the program is $145.6 million for the Space Transportation System at Vandenberg AFB, Calif., which the Committee has recommended be funded as requested. In addition, $11,328,000 has been added over the budget for certain necessary support facilities.

Installation and project	*Thousands*
Griffiss AFB, N.Y.: Fire station	+$1,300
Malmstrom AFB, Mont.:	
Alter BEQ	+4,200
Education center	+1,200
Plattsburgh AFB, N.Y.:	
Consolidated personnel support facility	+1,920
Base engineer facility	+2,708
Net adjustment	+11,328

Griffiss Air Force Base.—Currently assigned emergency vehicles are now housed in two substandard facilities, neither of which will accommodate the new P–15 large capacity crash fire fighting vehicle. The proposed consolidated fire station will also be located in a more advantageous location.

Malmstrom Air Force Base.—Two projects are proposed for addition. The first involves $1.2 million for a new education center to replace activities now conducted in a converted dormitory, a warehouse and a relocatable classroom. The other, at $4.2 million, will alter living quarters for 576 bachelor enlisted men to current adequacy standards.

Plattsburgh Air Force Base.—Base support functions are now performed from four widely separated, substandard buildings; addition of $1.9 million will alter an existing building to provide consolidated and efficient support to 3,700 military personnel. Likewise, civil engineering functions are also presently conducted from nine scattered locations; the recommended base engineer facility will provide a modern facility from which to support a physical plant valued in excess of $100 million.

TACTICAL AIR COMMAND

Funding of $54.4 million is recommended for the Tactical Air Command. This represents an increase of $6.6 million over the budget request.

Installation and project	*Thousands*
Various locations: Tactical missile training squadron facility	−$1,000
Homestead AFB, Fla.: Regional sewage system	+4,053
Langley AFB, Va.: Automotive maintenance complex	+2,300
Shaw AFB, S.C.:	
Electronic countermeasures facility	+580
Precision measurement equipment facility	+700
Net adjustment	+6,643

Various locations.—The tactical missile training facility was deleted by the Committee because the Air Force was not yet prepared to specify its location; this causes serious doubt on both the proposed scope of the project and on the cost estimate. This deferral is without prejudice, however.

Homestead Air Force Base.—This installation is presently not in compliance with EPA or State standards for discharge into Biscayne Bay. The recommended $4.1 million provides the Air Force proportionate share of the capital cost for connecting into the South Dade County regional wastewater collection and treatment system.

Langley Air Force Base.—A requirement exists to maintain and service 700 vehicles assigned to this base, although all facilities for this purpose are currently substandard. The proposed addition of $2.3 million will provide for efficient servicing under covered facilities.

Shaw Air Force Base.—Two projects are recommended for addition. The first is an electronic countermeasures facility for storage and servicing of ECM pods which support the RF–4 mission. The second, a $.7 million precision measurement equipment laboratory, will provide an adequate building for the calibration, testing, maintenance, repair and certification of precision measurement equipment.

U.S. AIR FORCE ACADEMY

The budget request for the Air Force Academy is approved, as requested. In addition, the Committee has recommended the addition of $4 million to upgrade library facilities to modern educational standards. The total approved is $4,635,000.

[Outside the United States]

PACIFIC AIR FORCES

The Committee is recommending a total of $16,963,000 for Pacific construction; this represents a decrease of $6,263,000 from the budget request. The reduction proposed is associated with four projects planned for Kadena Air Base, Japan (Okinawa): a squadron operations facility, base supply warehouse, and maintenance facilities for special duty aircraft and tactical aircraft. These efforts were not authorized.

U.S. AIR FORCES IN EUROPE

The budget request for European construction, predominantly in Germany and the United Kingdom, was $175,204,000. The Committee is recommending a total of $2,850,000, a reduction of $172,354,000.

Installation and project	*Thousands*
Various locations, Europe	−$154,435
Airfield protective facilities	−59,600
Minimum essential aircraft facilities	−23,000
Semi-hardened logistics facilities	−6,000
Chemical warfare protection	−10,000
European communications improvements	−2,040
Semi-hardened munitions storage	−8,820
Contingency pavements	−40,000
Tactical control improvements	−3,975
Passive defense improvements	−1,000
Decimomannau Air Base, Italy: Air combat maneuver instrument facility	−986
Incirlik Air Base, Turkey: Instrument landing and navigation facility	−516
Mildenhall RAF, U.K.: Jet fuel storage	−5,902
Ramstein Air Base, Germany:	
Telecommunications facility	−6,515
Hardened avionics maintenance facility	−4,000
Net adjustment	−172,354

Of the above reduction, all items except the Ramstein telecommunications facility are deleted in accordance with the Committee's overall actions concerning the NATO theater. This was discussed earlier in the report. The Ramstein facility failed authorization.

MINOR CONSTRUCTION

The Committee has recommended $30,703,000 for domestic and overseas minor construction. This is $350,000 above the budget request, an increase proposed by the Committee to construct an indoor small arms range at Malmstrom Air Force Base, Mont. The balance of the program is approved, as requested.

DEFENSE ACCESS ROADS

While there was no budget request for defense access roads at Air Force installations, the Committee became aware of a requirement for $1,350,000 to complete execution of two previously certified projects. The first involves the White Avenue project at Keesler Air Force Base: this project was certified as eligible under the access road program in fiscal year 1976, but circumstances have subsequently arisen which require that the scope of the project be increased from 280 feet to 400 feet. The Committee approves this increase, and has provided an additional $600,000 for this purpose. The second pr oject is at Wurtsmith Air Force Base, Mich., which was certified in December, 1977 as being essential to the national defense. The Committee approves the project, in an amount not to exceed $750,000, but has provided no additional funding—the project should be executed from within available resources under the continuing authority of 23 United States Code 210.

MILITARY CONSTRUCTION, DEFENSE AGENCIES

1978 appropriations	$58, 009, 000
1979 budget estimate	176, 300, 000
House allowance	183, 280, 000
Committee recommendation	187, 730, 000

The Budget Request

This appropriation finances projects for activities under the direct cognizance of the several Defense Agencies, for projects which mutually benefit more than one Service, and for programs under the centralized direction of the Office of the Secretary of Defense. Requested appropriations for fiscal year 1979 total $176.3 million, an increase of $118.3 million over fiscal year 1978 budget authority:

MILITARY CONSTRUCTION, DEFENSE AGENCIES

[In thousands of dollars]

	Fiscal year—		
	1978 estimate	1979 requested	1979/78 change
Major construction	63, 247	[1] 160, 500	+97, 253
Minor construction	500	[1] 4, 400	+3, 900
Planning and design	5, 000	11, 400	+6, 400
Total budget program	68, 747	176, 300	+107, 553
Offsetting financing	−10, 738	----------	+10, 738
New budget authority appropriation	58, 009	176, 300	+118, 291

[1] For comparability with fiscal year 1978, the major construction category contains $8,984,000 which is actually minor construction under new definitions. The latter category will be reflected at its actual total of $13,384,000 in subsequent tables.

Since fiscal year 1979 marks the first year that all projects with cross-service impact have been reflected in one place, the request is not totally comparable with the fiscal year 1978 program. The increase, however, is nonetheless significant: domestic construction reflects lifting of last year's "moratorium," and overseas effort includes several major initiatives, among them $42.6 million for overseas dependents schools.

Committee Recommendations

The Committee recommends new appropriations of $187,730,000 for fiscal year 1979. This is $11,430,000 above the budget request, and

$4,450,000 above House allowances. This is displayed in the table, below:

MAJOR COMMAND SUMMARY

[In thousands of dollars]

	Budget request	House allowance	Committee recommendation
Inside the United States:			
Defense Logistics Agency	19,952	19,952	19,952
Defense Mapping Agency	1,130	1,130	1,130
Defense Nuclear Agency	6,300	6,000	6,300
National Security Agency	2,850	2,680	2,680
Office of the Secretary of Defense	9,200	9,200	9,200
Total, inside United States	39,432	38,962	39,262
Outside the United States:			
Defense Logistics Agency	1,454	1,454	1,554
Office of Dependent Schools	42,630	33,680	42,630
Headquarters, U.S. European Command	48,000		
NATO Infrastructure		90,000	90,000
Total, outside United States	92,084	125,134	134,084
General support program:			
Minor construction	13,384	12,984	12,984
Planning and design	11,400	(9,400)	11,400
Emergency construction authority	20,000	10,000	15,000
Total, general support	44,784	22,984	39,384
General reduction		−3,800	
Grand total, Defense agencies program	176,300	183,280	212,730
Offsetting available resources			−25,000
New budget authority/appropriation	176,300	183,280	187,730

Adjustments proposed by the Committee are as follows:

Installation and project	*Thousands*
National Security Agency: energy monitoring system	−$170
Headquarters, U.S. European Command: classified project	−48,000
Minor construction:	
Defense Documentation Center, Alexandria, Va.: ADP facility	−230
Fort Meade, Md.: Youth opportunity program facility	−170
NATO Infrastructure	+90,000
Offsetting NATO reimbursements	−25,000
Emergency construction authority	−5,000
Net adjustment	+11,430

The NSA energy monitoring system and the two minor construction projects listed were withdrawn by the cognizant agencies subsequent to budget submission.

Headquarters, EUCOM.—The Committee proposes concurrence with the House in deleting this project due to premature funding.

NATO Infrastructure.—As discussed previously in this report, the Committee has transferred budget and accounting responsibility for this effort from the Army. The Army will remain the Department's executive agent for program execution.

NATO Reimbursements.—Although the Infrastructure program had been budgeted at $90 million, only $70 million in new budget authority was required due to anticipated reimbursements from NATO for past prefinancing. The Committee has transferred these anticipated receipts, along with the Infrastructure program, to this appropriation.

In addition, the Committee has increased the anticipated amount of reimbursement to $25 million as an amount reasonably achievable with concerted effort. In short, the total Infrastructure program of $90 million will require new authority of only $65 million.

Emergency construction.—The Committee agrees with the House that past obligation performance would indicate a need less than the budgeted $20,000,000. Due to the nature of the appropriation, however, the Committee is recommending reduction of only $5,000,000 in order to permit the Secretary latitude in addressing emergent equirements.

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NATIONAL GUARD AND RESERVE COMPONENTS

In total, the fiscal year 1979 budget request for the five Guard and Reserve components is $158.9 million, or $17.2 million below the amount enacted for fiscal year 1978. Last year's appropriation was also lower than prior year by over $10 million. The Committee is extremely concerned over this trend in recent years, particularly in the face of recruiting and retention difficulties and a backlog of required construction which is estimated to be $1,903,000,000 by the end of the budget year. At current programing rates, it is obvious that no incursion will be made into backlog; to the contrary, the growth rate will exceed resources applied, and the deficiency will continue to expand.

The specific decrease inherent in the fiscal 1979 request is, at least in part, attributable to deferral of any armory or Reserve center project where personnel strength was not at least 75 percent of authorized levels. This, however, presents somewhat of a "chicken-or-the-egg" situation: does poor recruitment/retention obviate the need for new facilities, or would adequate facilities assist in attracting and retaining qualified personnel? The topic could be—and probably has been—debated at great length with uncertain results. This uncertainty, though, coupled with an ever-growing construction backlog, would seem to militate against imposition of a policy which automatically precludes funding of necessary improvements.

Given this overall situation, the Committee has recommended an increase to the Guard and Reserve budget of $18,699,000, to a revised total of $177,599,000. This amount is only slightly higher than in fiscal year 1978, but should permit accomplishment of the most pressing deficiencies. The Committee has applied this increase to each individual component based upon that component's prioritized listing of unfunded requirements; the specific projects added are addressed on the following pages.

Given its concern over the status and progress of this program, the Committee is also initiating certain new procedures designed to assist in accomplishing its oversight responsibilities. This, basically, entails the establishment of formal reprograming procedures whereby major changes to the program will require approval by the Committee prior to implementation. This reflects the fact that, barring unforseen circumstances, it is only reasonable to expect that projects will be executed in the manner justified to and approved by the Congress. Specific criteria for reprograming are discussed earlier in this report. Similar procedures were directed in the House report.

The Committee specifically wishes to note that the application of reprograming limitations to Guard and Reserve appropriations is not intended to unduly constrain flexibility, nor is it in response to any real or perceived improprieties in the administration of the program. While the procedure assumes the validity of the approved project listing, it is recognized that changes occur—particularly National Guard projects which interface with State agencies—which

dictate redirection of funds. Since the statutory appropriation remains lump-sum, reprograming flexibility also remains inherent, with the only change being the requirement for affirmative Committee action. Administratively, this entails no additional workload, since justification has always been prepared under the standing authorization requirement for congressional notification of all projects proposed for execution; the Committee is only interested in changes or substitutions to the previously approved list.

Military Construction, Army National Guard

1978 appropriations	$49,400,000
1979 budget estimate	49,700,000
House allowance	43,500,000
Committee recommendation	54,677,000

Requested fiscal year 1979 appropriations of $49.7 million support construction of 44 armory projects and 38 non-armory projects, such as maintenance and support facilities. The following table displays the Army Guard program over the last several years:

MILITARY CONSTRUCTION, ARMY NATIONAL GUARD

[In thousands of dollars]

	Fiscal year—		
	1977 actual	1978 estimated	1979 requested
Major construction:			
Armory projects	16,272	18,965	21,400
Nonarmory projects	38,473	25,412	23,400
Minor construction	3,183	2,023	2,000
Planning and design	3,200	3,000	2,900
Total program/appropriation	61,128	49,400	49,700

COMMITTEE RECOMMENDATION

The Committee is recommending new fiscal year 1979 appropriations of $54,677,000 for Army National Guard projects. This is $4,977,000 above the budget request and $11,177,000 above house allowances. The approximately $5 million added by the Committee will allow accomplishment of an additional 14 projects, as indicated in the table below.

Installation and project	*Thousands*
Anchorage, Alaska: Combined support maint. shop alteration	+$120
Buckley ANGB, Colo.: Organizational maintenance shop	+230
Windsor Locks, Conn.: Organizational maintenance shop	+211
Forsyth, Ga.: Brigade logistical facility	+122
Kaunakakai, Hawaii: Organizational maintenance shop	+115
Springfield, Ky.: 60-person armory	+453
Oakgrove, La.: 60-person armory	+408
Vidalia, La.: 60-person armory	+404
Camp Edwards, Mass.: Training facility	+736
Worthington, Minn.: 150-person armory	+592
Albermarle, N.C.: 100-person armory	+346
Reidsville, N.C.: 200-person armory	+479
Haskell, Okla.: 60-person armory	+310
Greenville, Tenn.: 60-person armory	+451
Net adjustment	+4,977

Military Construction, Army Reserve

1978 appropriations	$50, 500, 000
1979 budget estimate	34, 800, 000
House allowance	26, 900, 000
Committee recommendation	38, 932, 000

The fiscal year 1979 budget request, at $34.8 million, reflects a decrease of $15.7 million from prior year. This, in large measure, reflects the fact the only locations where manpower exceeds 75 percent of allowances have been included. The requested amount will provide for 22 projects: five new centers, 15 expansions and alterations to existing facilities, and improvements to two annual training sites. Program trends in recent years are shown below:

MILITARY CONSTRUCTION, ARMY RESERVE

[In thousands of dollars]

	Fiscal year—		
	1977 actual	1978 estimated	1979 requested
Major construction	44, 459	41, 390	25, 100
Minor construction	4, 000	3, 000	4, 200
Planning and design	5, 345	6, 110	5, 500
Total program/appropriation	53, 804	50, 500	34, 800

COMMITTEE RECOMMENDATION

The Committee recommends a total of $38,932,000 for Army Reserve programs in fiscal year 1979. This is $4,132,000 above the budget request and $12,032,000 above the level approved by the House. In addition to those efforts contained within the request, the Committee has added the following three projects:

Installation and project	*Thousands*
Omaha, Neb.: 600-person Reserve Center w/org. maint. shop	+$1, 942
Miami, Fla.: Expand to 400-person center w/shop, maint. supt	+1, 270
Upland, Ca.: Expand to 200-person center w/shop	+920
Net adjustment	+4, 132

Military Construction, Naval Reserve

1978 appropriations	$21, 700, 000
1979 budget estimate	20, 400, 000
House allowance	16, 600, 000
Committee recommendation	23, 000, 000

Requested fiscal year 1979 appropriations for Naval and Marine Corps Reserve construction total $20.4 million. This compares with prior years as follows:

MILITARY CONSTRUCTION, NAVAL RESERVE

[In thousands of dollars]

	Fiscal year—		
	1977 actual	1978 estimated	1979 requested
Major construction	21, 300	19, 800	17, 900
Minor construction	450	500	1, 000
Planning and design	1, 850	1, 400	1, 500
Total program/appropriation	23, 600	21, 700	20, 400

The budget program would provide for nine major construction projects at eight locations, as well as four smaller energy conservation projects.

COMMITTEE RECOMMENDATION

New appropriations of $23,000,000 are recommended for fiscal year 1979 Navy Reserve effort. This includes approval for all projects, as submitted, as well as the addition of $2,600,000 for a bachelor enlisted quarters at the Naval Air Station, Dallas, Tex. The approved level is $6,400,000 above House allowances.

Military Construction, Air National Guard

1978 appropriations	$43, 300, 000
1979 budget estimate	41, 500, 000
House allowance	35, 800, 000
Committee recommendation	47, 590, 000

Construction for the Air Guard is budgeted at $41.5 million in fiscal year 1979, or $1.8 million below appropriations in fiscal year 1978:

MILITARY CONSTRUCTION, AIR NATIONAL GUARD

[In thousands of dollars]

	Fiscal year—		
	1977 actual	1978 estimated	1979 requested
Major construction	34, 231	37, 300	36, 100
Minor construction	1, 549	3, 000	2, 000
Planning and design	1, 420	3, 000	3, 400
Total program/appropriation	37, 200	43, 300	41, 500

Requested funds will provide for 46 projects for operations, maintenance and training facilities, as well as various energy conservation and flight safety efforts.

COMMITTEE RECOMMENDATION

In addition to the projects budgeted, the Committee recommends an additional $6,090,000 for 10 high priority unfunded efforts, as displayed in the table immediately below. This results in total proposed appropriations of $47,590,000, or $11,790,000 above amounts contained in the House bill.

Installation and project	*Thousands*
Selfridge AGB, Mich.: Avionics/weapons release facility	+$550
Douglas MAP, N.C.: Aerial port training facility	+550
Hancock Field, N.Y.:	
Fuel systems maintenance dock	+580
Avionics/weapons and release system shop	+1, 030
Hulman Field, Ind.: Arm/dearm pads	+440
Fort Wayne MAP, Ind.: Composite squadron ops/telecom center	+1, 160
Rosecrans Memorial Airport, Mo.: Aerial port training facility	+550
Puerto Rico IAP, P.R.: Alter corrosion control facility	+200
McGhee-Tyson Airport, Tenn.: Maintenance control facility	+330
Harrisburg IAP, Pa.: Avionics shop	+700
Net adjustment	+6, 090

Military Construction, Air Force Reserve

1978 appropriations	$11, 200, 000
1979 budget estimate	12, 500, 000
House allowance	8, 900, 000
Committee recommendation	13, 400, 000

The fiscal year 1979 program for the Air Force Reserve includes 15 major construction projects at 12 locations, and three energy conservation efforts. The budget total is $12.5 million, an increase of $1.3 million over fiscal year 1978 appropriations:

MILITARY CONSTRUCTION, AIR FORCE RESERVE

[In thousands of dollars]

	Fiscal year—		
	1977 actual	1978 estimated	1979 requested
Major construction	14, 623	10, 100	10, 900
Minor construction	600	300	300
Planning and design	824	800	1, 300
Total program	16, 047	11, 200	12, 500
Offsetting available resources	−5, 274		
New budget authority/appropriations	10, 773	11, 200	12, 500

COMMITTEE RECOMMENDATION

The Committee is recommending new appropriations of $13,400,000 for the Air Force Reserve in fiscal year 1979. This is $900,000 above the budget request and $4,500,000 above House allowances.

The increase recommended by the Committee relates to two specific projects: $590,000 for a short field takeoff and landing zone at Richards-Gebaur Air Force Base, Mo., and $310,000 for an electronic countermeasures pod shop at Carswell Air Force Base, Tex.

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FAMILY HOUSING, DEFENSE

1978 appropriations	$1,352,253,000
1979 budget estimate	1,570,900,000
House allowance	1,569,415,000
Committee recommendation	1,589,400,000

NOTE.—All figures exclude appropriations made under contract authority for debt principal reduction.

THE BUDGET REQUEST

The requested Family Housing program for fiscal year 1979 totals slightly below $1.6 billion, requiring an increase in appropriations of almost $219 million:

FAMILY HOUSING, DEFENSE

[In thousands of dollars]

	Fiscal year—		
	1978 estimate	1979 requested	1979/78 change
Construction of new housing	46,376	65,420	+19,044
Housing improvements	33,022	67,430	+34,408
Planning and design	3,002	750	−2,252
Total construction	82,400	133,600	+51,200
Operating and leasing expenses	687,117	770,168	+83,051
Maintenance of real property	598,333	656,832	+58,499
Interest payments and mortgage insurance	43,577	38,200	−5,377
Total operation and maintenance	1,329,027	1,465,200	+136,173
Grand total, housing program	1,411,427	1,598,800	+187,373
Offsetting financing	−59,174	−27,900	+31,274
New budget authority/appropriation	1,352,253	1,570,900	+218,647

The 1979 program will provide for the construction of 1,418 new units of family housing, 100 mobile home facilities, improvements to thousands of existing public quarters, and operation and maintenance support for an average inventory of 391,728 housing units. Requested funds will also continue the ongoing major effort to reduce an extremely large maintenance backlog.

COMMITTEE RECOMMENDATION

The Committee is recommending new fiscal year 1979 appropriations of $1,589,400,000 for the Family Housing program. This is

$18,500,000 above the budget request and $19,985,000 above House allowances, as displayed in the following table:

SUMMARY BY COMPONENT

[In thousands of dollars]

	Budget request	House allowance	Committee recommendation
Construction:			
Army	58,695	62,310	58,695
Navy/Marine Corps	37,946	40,696	56,446
Air Force	33,935	36,585	33,935
Defense agencies	3,024	2,524	3,024
Total, construction	133,600	142,115	152,100
Operation and maintenance, leasing	1,427,000	1,417,000	1,427,000
Debt payment:			
Program total	157,400	157,400	157,400
Less portion for principal reduction	−119,200	−119,200	−119,200
Total, debt payment	38,200	38,200	38,200
Grand total, program	1,598,800	1,597,315	1,617,300
Offsetting available resources	−27,900	−27,900	−27,900
New budget authority appropriation	1,570,900	1,569,415	1,589,400

The Committee has made only one funding adjustment to the budget as requested, and that is the addition of $18,500,000 for 400 units of family housing at the Submarine Support Facility, Kings Bay, Ga. The Committee is very curious why the Department of Defense had not requested these units in the budget, since the need is obvious; the facility must be operational prior to July 1, 1979 when treaty commitments require that our Poseidon squadron quit Rota, Spain.

The House, also recognizing the generic need for housing in the area, approved construction of 100 new units, based upon a more gradual phasing, although funding was provided by transfer of funds previously approved for construction of housing units at the Submarine Base, Bangor, Wash. The Committee does not believe that the military buildup will be gradual, and the decidedly rural nature of the location precludes the availability of housing in required numbers on the public market. The Committee definitely does not agree with the use of funding previously designated for Bangor to satisfy the Kings Bay requirement. Ultimate housing needs at the Trident site may be in question, but it is fairly certain that the final number will exceed current approvals; no purpose is to be gained by redirecting these approved funds elsewhere.

FAMILY HOUSING MAINTENANCE AND ALTERATION

The House has recommended the addition of $10 million for alterations, and $15 million for maintenance, of family housing quarters. The Committee, while sharing the House's concern over this area, is not convinced that additional funds will provide commensurate benefit. It is also noted that the general area of housing improvements has increased over $34 million from fiscal 1978, and the 1978 program had increased significantly over prior year.

Similarly, the request for real property maintenance has increased by $58.5 million over fiscal year 1978, and the latter increased by over $100 million from fiscal 1977. Rather than still further increases in this area, the Committee believes that special emphasis would be equally productive, and is again proposing the imposition of a statutory maintenance "floor." This will insure that funds budgeted for maintenance will be used entirely for that purpose. The amount proposed for the floor, $635,000,000, is slightly below the total budgeted in order to offer minor flexibility in the event of unforseen circumstances. The following language has been added to the bill:

"*Provided further*, That of the amounts appropriated for operation and maintenance, not less than $635,000,000 shall be available only for the maintenance of real property facilities."

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HOMEOWNERS ASSISTANCE FUND, DEFENSE

1978 appropriations	$1,500,000
1979 budget estimate	5,000,000
House allowance	
Committee recommendation	1,500,000

The Budget Request

This program is authorized in law to reduce losses by military and civilian employee homeowners when homes must be disposed of in a distressed climate caused by base closure or reduction in scope. Assistance is by either reimbursement for certain losses on private sales or foreclosures, or by purchase of the property by the Department of Defense. The program is administered by the Department of the Army.

The budget request for fiscal year 1979 is for an appropriation of $5 million, based upon anticipated program volume. This is displayed in the chart below, together with a comparison with prior year:

HOMEOWNERS ASSISTANCE FUND, DEFENSE

[In thousands of dollars]

	Fiscal year—		
	1978 estimate	1979 requested	1979/78 change
Payments to homeowners	856	955	+99
Operating costs (DOD/FHA expenses)	2,575	3,581	+1,006
Acquisition of properties	1,560	3,219	+1,659
Mortgages assumed	2,109	4,445	+2,336
Total program	7,100	12,200	+5,100
Resources available from prior year	−12,140	−9,803	+2,337
Estimated revenues from sales	−3,263	−5,084	−1,821
Unobligated balances carried forward	+9,803	+7,687	−2,116
New budget authority/appropriation	1,500	5,000	+3,500

Committee Recommendation

The Committee recommends new fiscal year 1979 appropriations of $1,500,000 for the Homeowners Assistance program, a decrease of $3,500,000 from the budget request. This basically finances unfunded authorization carried over from fiscal 1978. The resulting program of $8.7 million should adequately support both ongoing effort as well as accommodate any increase that might result from base realinements announced officially during the year.

MAJOR CONSTRUCTION PROGRAMS BY STATE

	DOD request	House allowance	Committee recommendation
INSIDE THE UNITED STATES			
Alabama:			
Army:			
Redstone Arsenal	$3,825,000	$3,825,000	$3,316,000
Anniston Ammunition Depot	2,900,000	2,900,000	10,736,000
Fort Rucker			2,280,000
Subtotal	6,725,000	6,725,000	16,332,000
Army National Guard:			
Arab	188,000	188,000	188,000
Ashland	394,000	394,000	394,000
Fort McClellan	1,997,000	1,997,000	1,997,000
Huntsville	320,000	320,000	320,000
Jasper	538,000	538,000	538,000
Talladega	211,000	211,000	211,000
Winfield	405,000	405,000	405,000
Subtotal	4,053,000	4,053,000	4,053,000
Air Force Reserve:			
Maxwell AFB	750,000	750,000	750,000
Total	11,528,000	11,528,000	21,135,000
Alaska:			
Army:			
Fort Wainwright	3,482,000	3,482,000	3,482,000
Fort Greely	2,743,000	2,743,000	2,743,000
Fort Richardson			7,208,000
Subtotal	6,225,000	6,225,000	13,433,000
Navy:			
Naval Communications Station, Adak	1,190,000	1,190,000	1,190,000
Naval Station, Adak	8,140,000	6,140,000	8,140,000
Subtotal	9,330,000	7,330,000	9,330,000
Air Force:			
Eielson AFB	1,602,000	1,602,000	1,602,000
King Salmon Airport	250,000	250,000	250,000
Shemya AFB	546,000	546,000	546,000
Galena Airport	540,000	540,000	540,000
Various locations	3,400,000	3,400,000	3,400,000
Subtotal	6,338,000	6,338,000	6,338,000
Army National Guard:			
Anchorage			120,000
Kotzebue	1,635,000	1,635,000	1,635,000
Subtotal	1,635,000	1,635,000	1,755,000
Air National Guard: Kulis ANG Base	2,800,000	2,800,000	2,800,000
Total	26,328,000	24,328,000	33,656,000
Arizona:			
Army: Fort Huachuca	4,027,000	4,027,000	4,027,000
Navy: Marine Corps Air Station, Yuma	930,000	930,000	930,000
Air Force:			
Luke AFB	3,843,000	3,843,000	3,843,000
Davis-Monthan AFB	1,816,000	1,816,000	1,816,000
Subtotal	5,659,000	5,659,000	5,659,000
Army Reserve: Fort Huachuca	946,000	946,000	946,000
Air National Guard: Sky Harbor IAP	200,000	200,000	200,000
Total	11,762,000	11,762,000	11,762,000
Arkansas:			
Army: Pine Bluff Arsenal	523,000	523,000	523,000
Air Force: Little Rock AFB	847,000	847,000	847,000

MAJOR CONSTRUCTION PROGRAMS BY STATE—Continued

	DCD request	House allowance	Committee recommendation
Army National Guard:			
Camp Robinson	$2,020,000	$2,020,000	$2,020,000
Conway	401,000	401,000	401,000
Fort Chafee	141,000	141,000	141,000
Hot Springs	351,000	351,000	351,000
Marianna	113,000	113,000	113,000
Rogers	337,000	337,000	337,000
Subtotal	3,363,000	3,363,000	3,363,000
Navy Reserve: Little Rock	1,279,000	1,279,000	1,279,000
Total	6,012,000	6,012,000	6,012,000
California:			
Army:			
Fort Ord	4,862,000	4,862,000	4,862,000
Presidio of Monterey	310,000	310,000	310,000
Sierra Army Depot	843,000	843,000	1,383,000
Presido of San Francisco	368,000	----------	----------
Subtotal	6,383,000	6,015,000	6,555,000
Navy:			
Construction Battalion Center, Port Hueneme	1,270,000	1,270,000	1,270,000
Marine Corp Base, Camp Pendleton	19,700,000	19,700,000	19,700,000
Marine Corp Base, Twentynine Palms	12,000,000	12,000,000	12,000,000
Marine Corps Air Station, El Toro	7,150,000	7,150,000	7,150,000
Marine Corps Air Station, Santa Ana	920,000	920,000	920,000
Naval Air Station, Miramar	9,500,000	9,500,000	9,500,000
Naval Air Station, Moffet Field	1,810,000	1,810,000	1,810,000
Naval Air Station, North Island	8,190,000	8,190,000	8,190,000
Naval Station, San Diego	41,000,000	29,300,000	41,000,000
Naval Weapons Station, Concord	2,600,000	2,600,000	2,600,000
Naval Weapons Center, China Lake	6,540,000	6,540,000	6,540,000
Long Beach Naval Shipyard, Long Beach	9,530,000	16,230,000	16,230,000
Naval Amphibious School, Coronado	3,770,000	470,000	3,770,000
Naval Air Rework Facility, Alameda	360,000	360,000	360,000
Naval Air Station, Alameda	1,640,000	1,640,000	1,640,000
Naval Amphibious Base, Coronado	200,000	200,000	200,000
Naval Air Station, Lemoore	1,450,000	1,450,000	2,350,000
Naval Support Activity, Long Beach	320,000	320,000	320,000
Naval Weapons Station, Seal Beach	190,000	190,000	190,000
Naval Training Center, San Diego	850,000	----------	850,000
Naval Supply Center, San Diego	11,150,000	11,150,000	15,250,000
Fleet Training Center, San Diego	8,200,000	8,200,000	8,200,000
Fleet Combat Training Center, Pacific	760,000	760,000	760,000
Fleet ASW Training Center, San Diego	4,250,000	4,250,000	4,250,000
Naval Supply Center, Oakland	6,520,000	6,320,000	6,520,000
Naval Postgraduate School, Monterey	130,000	130,000	130,000
Fleet Numerical Weather Central, Monterey	490,000	490,000	490,000
Mare Island Naval Shipyard, Vallejo	9,797,000	19,297,000	9,797,000
Pacific Missile Test Center, Point Mugu	3,810,000	3,810,000	3,810,000
PWC San Francisco	3,300,000	3,300,000	3,300,000
Naval Technical Training Center, San Francisco	1,550,000	1,550,000	1,550,000
Subtotal	178,947,000	179,097,000	190,647,000
Air Force:			
Beale AFB	2,256,000	2,256,000	2,256,000
Castle AFB	13,351,000	9,293,000	13,351,000
Edwards AFB	4,600,000	4,600,000	4,600,000
George AFB	2,392,000	2,392,000	2,392,000
March AFB	357,000	357,000	357,000
Mather AFB	4,522,000	4,522,000	4,522,000
McClellan AFB	3,700,000	3,700,000	3,700,000
Norton AFB	649,000	649,000	649,000
Travis AFB	300,000	300,000	300,000
Vandenberg AFB	141,782,000	109,682,000	141,782,000
Subtotal	173,909,000	137,751,000	173,909,000
Defense agencies:			
Defense Depot, Tracy	2,342,000	2,342,000	2,342,000
Defense Fuel Support Point, Norwalk	1,488,000	1,488,000	1,488,000
Defense Property Disposal Office, McClellan	1,533,000	1,533,000	1,533,000
Subtotal	5,363,000	5,363,000	5,363,000

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MAJOR CONSTRUCTION PROGRAMS BY STATE—Continued

	DOD request	House allowance	Committee recommendation
Army National Guard: Sacramento	$522,000	$522,000	$522,000
Army Reserve: Upland			920,000
Navy Reserve:			
Long Beach	4,492,000	4,492,000	4,492,000
Moffet Field	510,000	510,000	510,000
Point Mugu	4,877,000	4,877,000	4,877,000
Subtotal	9,879,000	9,879,000	9,879,000
Air National Guard:			
Moffet Field	170,000	170,000	170,000
North Highlands ANG Station	330,000	330,000	330,000
Subtotal	500,000	500,000	500,000
Air Force Reserve: Travis AFB	470,000	470,000	470,000
Total	376,073,000	339,697,000	388,865,000
Colorado:			
Army:			
Fitzsimmons Army Medical Center	1,436,000	1,436,000	1,436,000
Fort Carson	25,837,000	24,937,000	25,837,000
Subtotal	27,273,000	26,373,000	27,273,000
Air Force:			
Buckley Air National Guard Base	2,628,000	2,628,000	2,628,000
U.S. Air Force Academy	635,000	635,000	4,635,000
Subtotal	3,263,000	3,263,000	7,263,000
Army National Guard: Buckley	720,000	720,000	950,000
Air National Guard: Buckley	580,000	580,000	580,000
Total	31,836,000	30,936,000	36,066,000
Connecticut:			
Navy:			
Naval Submarine School, New London	6,050,000	6,050,000	6,050,000
Naval Submarine Base, New London	13,650,000	8,950,000	13,650,000
Naval Underwater Systems Center, New London	420,000	420,000	420,000
Subtotal	20,120,000	15,420,000	20,120,000
Army National Guard:			
New Britain	763,000	763,000	763,000
Windsor Locks			211,000
Subtotal	763,000	763,000	974,000
Army Reserve: East Windsor	2,935,000	2,935,000	2,935,000
Air National Guard: Bradley	930,000	930,000	930,000
Total	24,748,000	20,048,000	24,959,000
Delaware:			
Air Force: Dover Air Force Base	8,021,000	711,000	8,021,000
Air National Guard: Wilmington	950,000	950,000	950,000
Air Force Reserve: Dover AFB	2,660,000	1,000,000	2,660,000
Total	9,971,000	2,661,000	9,971,000
District of Columbia:			
Army:			
Walter Reed Hospital	3,524,000	2,424,000	3,524,000
Fort McNair	133,000	133,000	
Subtotal	3,657,000	3,657,000	3,524,000
Navy:			
Naval District, Washington	4,670,000	440,000	4,575,000
Naval Research Laboratory, Washington	5,400,000	5,400,000	5,400,000
Subtotal	10,070,000	5,840,000	9,975,000
Air Force: Bolling AFB	355,000	355,000	355,000
Total	14,082,000	9,852,000	13,854,000

MAJOR CONSTRUCTION PROGRAMS BY STATE—Continued

	DOD request	House allowance	Committee recommendation
Florida:			
Navy:			
Coastal System Laboratory, Panama City	$3,510,000	$3,510,000	$3,510,000
Naval Training Equipment Center, Orlando	250,000	250,000	250,000
Fleet Training Center, Mayport	630,000	630,000	630,000
Naval Ordnance Test Unit, Cape Canaveral	360,000	360,000	360,000
Naval Air Rework Facility, Jacksonville	800,000	800,000	
Naval Air Station, Jacksonville	810,000	810,000	1,610,000
Naval Training Center, Orlando	5,620,000	5,620,000	5,620,000
Naval Station, Mayport	17,120,000	6,820,000	17,120,000
Naval Air Station, Pensacola	730,000	730,000	730,000
Naval Air Station, Cecil Field	2,320,000	2,320,000	2,320,000
Subtotal	32,150,000	21,850,000	32,150,000
Air Force:			
Eglin AFB	1,899,000	1,899,000	3,579,000
Patrick AFB	3,504,000	3,504,000	3,504,000
Tyndall AFB	5,500,000	8,687,000	6,546,000
Cape Canaveral AFB	9,624,000	9,624,000	9,624,000
Homestead AFB			4,053,000
Subtotal	20,527,000	23,714,000	26,506,000
Defense agencies:			
Defense Property Disposal Office, Jacksonville	811,000	811,000	811,000
Defense Property Disposal Office, Pensacola	558,000	558,000	558,000
Defense Fuel Support Point, Lynn Haven	476,000	476,000	476,000
Subtotal	1,845,000	1,845,000	1,845,000
Army National Guard:			
Jacksonville	664,000	664,000	664,000
West Palm Beach	712,000	712,000	712,000
Subtotal	1,376,000	1,376,000	1,376,000
Army Reserve:			
West Palm Beach	1,078,000	1,078,000	1,078,000
Miami			1,270,000
Subtotal	1,078,000	1,078,000	2,348,000
Navy Reserve: Jacksonville	2,404,000	2,404,000	2,404,000
Total	59,380,000	52,267,000	68,229,000
Georgia:			
Army:			
Fort Benning	1,528,000	1,528,000	5,173,000
Fort Stewart	58,276,000	58,276,000	58,276,000
Fort Gordon	3,297,000	3,297,000	3,297,000
Subtotal	63,101,000	63,101,000	66,746,000
Navy:			
Navy Supply Corps School, Athens	90,000	90,000	90,000
Naval Sub Support Base, Kings Bay	39,100,000	39,100,000	35,854,000
Marine Corps Logistics Support Base, Albany	570,000	570,000	570,000
Subtotal	39,760,000	39,760,000	36,514,000
Air Force:			
Moody AFB	2,343,000	2,343,000	2,343,000
Robins AFB	6,924,000	6,924,000	9,424,000
Subtotal	9,267,000	9,267,000	11,767,000
Defense agencies: DPDD, Fort Stewart	169,000	169,000	169,000
Army National Guard:			
Dobbins	2,065,000	2,065,000	2,065,000
Forsyth			122,000
Subtotal	2,065,000	2,065,000	2,187,000
Air National Guard:			
Dobbins	725,000	725,000	725,000
McKinnon Airport	180,000	180,000	180,000
Subtotal	905,000	905,000	905,000

MAJOR CONSTRUCTION PROGRAMS BY STATE—Continued

	DOD request	House allowance	Committee recommendation
Air Force Reserve: Robins AFB	$1,190,000	$1,190,000	$1,190,000
Total	116,457,000	116,457,000	119,478,000
Hawaii:			
Army:			
Helemano	1,916,000	1,916,000	1,916,000
Schofield Barracks	12,223,000	12,223,000	12,223,000
Subtotal	14,139,000	14,139,000	14,139,000
Navy:			
Marine Corps Air Station, Kaneohe Bay	8,500,000	8,500,000	8,500,000
Naval Station, Pearl Harbor	16,790,000	2,790,000	16,790,000
Naval Submarine Base, Pearl Harbor	6,000,000		1,500,000
Naval Submarine Training Center, Pearl Harbor	1,680,000	1,680,000	1,680,000
Naval Supply Center, Pearl Harbor	3,750,000	3,750,000	3,750,000
Pearl Harbor Naval Shipyard, Pearl Harbor	5,390,000	5,390,000	4,800,000
Navy Public Works Center, Pearl Harbor	1,040,000	1,040,000	1,040,000
Subtotal	43,150,000	23,150,000	38,060,000
Defense Agencies: DPDD, Pearl Harbor	187,000	187,000	187,000
Army National Guard:			
Waiawa Gulch	423,000	423,000	423,000
Kaunakakai			115,000
Subtotal	423,000	423,000	538,000
Total	57,889,000	37,899,000	52,924,000
Idaho:			
Air Force: Mountain Home AFB	2,644,000	2,644,000	2,644,000
Army National Guard: Gowen Field	230,000	230,000	230,000
Total	2,874,000	2,874,000	2,874,000
Illinois:			
Army:			
Rock Island Arsenal	1,957,000	1,957,000	1,957,000
Savanna Army Depot	251,000	251,000	251,000
Subtotal	2,208,000	2,208,000	2,208,000
Navy: Public Works Center, Great Lakes	3,610,000	3,610,000	3,610,000
Air Force: Scott AFB	2,702,000	2,702,000	4,202,000
Army Reserve: Springfield	986,000	986,000	986,000
Air National Guard: Capital MAP	180,000	180,000	180,000
Total	9,686,000	9,686,000	11,186,000
Indiana:			
Army:			
Indiana AAP	548,000	548,000	548,000
Fort Benjamin Harrison	2,484,000	2,484,000	2,484,000
Subtotal	3,032,000	3,032,000	3,032,000
Navy:			
Naval Weapons Support Center, Crane	480,000	480,000	480,000
Naval Avionics Facility, Indianapolis	2,900,000	2,900,000	2,900,000
Subtotal	3,380,000	3,380,000	3,380,000
Air Force: Grissom AFB	314,000	314,000	314,000
Defense agencies: Defense Property Disposal Office, Indianapolis	1,353,000	1,353,000	1,353,000
Army National Guard:			
Camp Atterbury	2,287,000	2,287,000	2,287,000
Gary (Northwest)	1,006,000	1,006,000	1,006,000
Muncie	674,000	674,000	674,000
Subtotal	3,967,000	3,967,000	3,967,000
Air National Guard:			
Hulman Field			440,000
Fort Wayne MAP			1,160,000
Subtotal			1,600,000
Total	12,046,000	12,846,000	13,646,000

MAJOR CONSTRUCTION PROGRAMS BY STATE—Continued

	DOD request	House allowance	Committee recommendation
Iowa:			
Army: Iowa AAP	$1, 028, 000	$1, 028, 000	$501, 000
Army Reserve: Fort Des Moines	1, 476, 000	1, 476, 000	1, 476, 000
Total	2, 504, 000	2, 504, 000	1, 977, 000
Kansas:			
Army:			
Sunflower AAP	1, 281, 000	1, 281, 000	518, 000
Kansas AAP	1, 124, 000	1, 124, 000	620, 000
Fort Leavenworth	2, 877, 000	2, 877, 000	2, 877, 000
Fort Riley	7, 801, 000	7, 801, 000	5, 915, 000
Subtotal	13, 083, 000	13, 083, 000	9, 930, 000
Air Force: McDonnell AFB	2, 620, 000	2, 620, 000	2, 620, 000
Defense agencies: DPDO McDonnell AFB	463, 000	463, 000	463, 000
Army National Guard: Fort Riley	944, 000	944, 000	944, 000
Air National Guard: Forbes Field	480, 000	480, 000	480, 000
Total	17, 590, 000	17, 590, 000	14, 437, 000
Kentucky:			
Army:			
Fort Campbell	3, 447, 000	3, 447, 000	748, 000
Fort Knox	14, 851, 000	14, 851, 000	15, 553, 000
Subtotal	18, 298, 000	18, 298, 000	16, 301, 000
Defense agencies: DPDO, Fort Knox	439, 000	439, 000	439, 000
Army National Guard:			
Ashland	207, 000	207, 000	207, 000
Bowling Green	236, 000	236, 000	236, 000
Fort Knox	496, 000	496, 000	496, 000
Frankfort	201, 000	201, 000	201, 000
Springfield			453, 000
Subtotal	1, 140, 000	1, 140, 000	1, 593, 000
Army Reserve: Madisonville	493, 000	493, 000	493, 000
Total	20, 370, 000	20, 370, 000	18, 826, 000
Louisiana:			
Army: Fort Polk	26, 360, 000	26, 360, 000	26, 360, 000
Navy: Naval Support Activity, New Orleans	150, 000	150, 000	150, 000
Air Force:			
Barksdale AFB	510, 000	510, 000	510, 000
England AFB	1, 875, 000	1, 875, 000	1, 875, 000
Subtotal	2, 385, 000	2, 385, 000	2, 385, 000
Army National Guard:			
De Quincy	469, 000	469, 000	469, 000
La Fayette	338, 000	338, 000	338, 000
Oakgrove			408, 000
Vidalia			404, 000
Subtotal	807, 000	807, 000	1, 619, 000
Army Reserve: New Orleans	1, 183, 000	1, 183, 000	1, 183, 000
Air National Guard: NAS New Orleans	540, 000	540, 000	540, 000
Total	31, 425, 000	31, 425, 000	32, 237, 000
Maine:			
Navy:			
Naval Fuel Annex, Casco Bay	1, 150, 000	1, 150, 000	
Naval Communications Unit, Cutler	310, 000	310, 000	310, 000
Naval Air Station, Burnswick	16, 490, 000	16, 490, 000	16, 490, 000
Portsmouth Naval Shipyard, Kittery	14, 550, 000	14, 550, 000	14, 550, 000
Subtotal	32, 500, 000	32, 500, 000	31, 350, 000
Air Force: Loring AFB	359, 000	359, 000	359, 000
Army National Guard: NAS Brunswick	140, 000	140, 000	140, 000
Total	32, 999, 000	32, 999, 000	31, 849, 000

MAJOR CONSTRUCTION PROGRAMS BY STATE—Continued

	DOD request	House allowance	Committee recommendation
Maryland:			
Army:			
Aberdeen Proving Ground	$9,412,000	$9,412,000	$9,412,000
Fort Meade	10,669,000		10,669,000
Fort Ritchie	5,115,000	5,115,000	5,115,000
Subtotal	25,196,000	14,527,000	25,196,000
Navy:			
Naval Station, Annapolis	1,000,000	1,000,000	1,000,000
Naval Radio Transmission Facility, Annapolis	850,000	850,000	850,000
Naval Academy, Annapolis	14,240,000	13,240,000	14,240,000
Naval Ordnance Station, Indian Head	410,000	410,000	410,000
NATC, Patuxent River	6,100,000	6,100,000	9,200,000
NSRDC, Bethesda	1,290,000	1,290,000	1,290,000
National Naval Medical Center, Bethesda	8,430,000	8,430,000	8,430,000
Subtotal	32,320,000	31,320,000	35,420,000
Air Force: Andrews AFB	447,000	447,000	447,000
Defense agencies:			
Defense Property Disposal Office, Fort Meade	546,000	546,000	546,000
Armed Forces Radiobiology Research Institute, Bethesda	6,300,000	6,000,000	6,300,000
U.S. Army Topographic Station	170,000		
Fort Meade—NSA	3,210,000	3,040,000	3,040,000
Subtotal	10,226,000	9,586,000	9,886,000
Army National Guard: Westminster	529,000	529,000	529,000
Army Reserve: Baltimore	2,593,000	2,593,000	2,593,000
Air National Guard: Glenn L. Martin State Airport	6,580,000	6,580,000	6,580,000
Air Force Reserve: Andrews AFB	500,000	500,000	500,000
Total	78,391,000	66,082,000	81,151,000
Massachusetts:			
Army:			
Fort Devens	1,118,000	1,118,000	1,118,000
Natick Labs	3,221,000	3,221,000	3,221,000
Subtotal	4,339,000	4,339,000	4,339,000
Air Force: Hanscom AFB	3,577,000	3,577,000	3,577,000
Army National Guard:			
Camp Edwards	1,062,000	1,062,000	1,798,000
Metheun	982,000	982,000	982,000
Subtotal	2,044,000	2,044,000	2,780,000
Navy Reserve: NAS South Weymouth	805,000	805,000	805,000
Air National Guard: Barnes MAP	1,480,000	1,480,000	1,480,000
Total	12,245,000	12,245,000	12,981,000
Michigan:			
Army: Michigan Army Missile Plant	1,284,000	1,284,000	1,284,000
Air Force:			
K. I. Sawyer AFB	300,000	300,000	300,000
Selfridge ANGB	2,578,000	2,578,000	2,578,000
Wurtsmith AFB	412,000	412,000	412,000
Subtotal	3,290,000	3,290,000	3,290,000
Defense agencies: DPDO, Selfridge AFB	1,497,000	1,497,000	1,497,000
Army National Guard: Camp Grayling	1,006,000	1,006,000	1,006,000
Air National Guard: Selfridge ANGB	510,000	510,000	1,060,000
Total	7,587,000	7,587,000	8,137,000
Minnesota:			
Army National Guard:			
Jackson	516,000	516,000	516,000
White Bear Lake	513,000	513,000	513,000
Worthington			592,000
Subtotal	1,029,000	1,029,000	1,621,000

MAJOR CONSTRUCTION PROGRAMS BY STATE—Continued

	DOD request	House allowance	Committee recommendation
Army Reserve:			
Buffalo	$639,000	$639,000	$639,000
Willmar (Paynesville)	1,053,000	1,053,000	1,053,000
Subtotal	1,692,000	1,692,000	1,692,000
Air National Guard: Duluth IAP	640,000	640,000	640,000
Air Force Reserve: St. Paul IAP	850,000	850,000	850,000
Total	4,211,000	4,211,000	4,803,000
Mississippi:			
Air Force:			
Columbus AFB	1,801,000	1,801,000	1,801,000
Keesler AFB			7,835,000
Subtotal	1,801,000	1,801,000	9,636,000
Defense agencies: DPDO, Keesler, AFB	611,000	611,000	611,000
Army National Guard:			
Camp McCain	349,000	349,000	349,000
Camp Shelby	837,000	837,000	837,000
Taylorsville	297,000	297,000	297,000
Yazoo	287,000	287,000	287,000
Subtotal	1,770,000	1,770,000	1,770,000
Total	4,182,000	4,182,000	12,017,000
Missouri:			
Army: Fort Leonard Wood	11,749,000	11,749,000	14,226,000
Dejense agencies:			
DMA Aerospace Center, St Louis	1,130,000	1,130,000	1,130,000
DPDO, Fort Leonard Wood	371,000	371,000	371,000
Subtotal	1,501,000	1,501,000	1,501,000
Army National Guard:			
Kennett	350,000	350,000	350,000
Lepanon	401,000	401,000	401,000
Subtotal	751,000	751,000	751,000
Army Reserve: Washington	570,000	570,000	570,000
Air National Guard:			
Lamber-St. Louis IAP	1,420,000	1,420,000	1,420,000
Rosecrans Memorial Airport			550,000
Subtotal	1,420,000	1,420,000	1,970,000
Air Force Reserve: Richards Gebaur AFB			590,000
Total	15,991,000	15,991,000	19,608,000
Montana:			
Air Force: Malmstrom AFB			5,750,000
Army National Guard: Harlowton	406,000	406,000	406,000
Total	406,000	406,000	6,156,000
Nebraska:			
Army: Cornhusker AAP			640,000
Army Reserve: Omaha			1,942,000
Total			2,582,000
Nevada:			
Army: Hawthorn Ammo Depot	1,547,000	1,547,000	1,547,000
Air Force: Nellis AFB	17,388,000	17,388,000	17,388,000
Army National Guard: Carson City	160,000	160,000	160,000
Air National Guard: Reno IAP	420,000	420,000	420,000
Total	19,515,000	19,515,000	19,515,000
New Hampshire:			
Navy: Naval Shipyard, Portsmouth		1,600,000	

MAJOR CONSTRUCTION PROGRAMS BY STATE—Continued

	DOD request	House allowance	Committee recommendation
New Jersey:			
Army:			
Bayonne Terminal	$387,000	$387,000	$387,000
Picatinny Arsenal	16,839,000	16,839,000	16,839,000
Subtotal	17,226,000	17,226,000	17,226,000
Navy:			
Naval Weapons Station, Earle	10,390,000	4,190,000	10,390,000
Naval Air Propulsion Test Center, Trenton	370,000	370,000	370,000
Naval Air Engineering Center, Lakehurst	480,000	140,000	140,000
Subtotal	11,240,000	4,700,000	10,900,000
Air Force: McGuire AFB	589,000	589,000	2,630,000
Army National Guard: Totowa	858,000	858,000	858,000
Army Reserve: Edison	1,841,000	1,841,000	1,841,000
Air National Guard: McGuire AFB	1,365,000	1,365,000	1,365,000
Total	33,119,000	26,579,000	34,820,000
New Mexico:			
Air Force:			
Cannon AFB	4,129,000	4,129,000	4,129,000
Holloman AFB	4,135,000	4,135,000	4,135,000
Kirtland AFB	1,450,000	1,450,000	1,450,000
Subtotal	9,714,000	9,714,000	9,714,000
Army National Guard: Springer	363,000	363,000	363,000
Air National Guard: Kirtland AFB	790,000	790,000	790,000
Total	10,867,000	10,867,000	10,867,000
New York:			
Army:			
Seneca Army Depot	1,087,000	1,087,000	1,087,000
U.S. Military Academy	12,313,000	12,265,000	12,313,000
Watervliet Arsenal	27,021,000	20,500,000	2,000,000
Subtotal	40,421,000	33,852,000	15,400,000
Air Force:			
Griffiss AFB	6,199,000	7,867,000	7,499,000
Plattsburgh AFB	6,364,000	11,691,000	10,992,000
Subtotal	12,563,000	19,558,000	18,491,000
Army National Guard: Fort Drum	2,381,000	2,381,000	2,381,000
Army Reserve:			
Buffalo	1,042,000	1,042,000	1,042,000
Canton	775,000	775,000	775,000
Malone	1,027,000	1,027,000	1,027,000
Wayland	700,000	700,000	700,000
Subtotal	3,544,000	3,544,000	3,544,000
Air National Guard: Hancock Field			1,470,000
Air Force Reserve: Niagara Falls IAP	270,000	270,000	270,000
Total	59,179,000	59,605,000	41,556,000
North Carolina:			
Army:			
Fort Bragg	9,270,000	9,270,000	8,884,000
Sunny Point Terminal	1,228,000		1,228,000
Subtotal	10,498,000	9,270,000	10,112,000
Navy:			
Naval Facility, Cape Hatteras	540,000	540,000	540,000
Regional Medical Center, Camp Lejeune	51,500,000	49,000,000	51,500,000
Marine Corps Base, Camp Lejeune	16,660,000	16,660,000	16,130,000
Marine Corps Air Station, Cherry Point	2,000,000	2,000,000	2,000,000
Marine Corps Air Station, New River	5,300,000	5,300,000	5,300,000
Naval Hospital, Cherry Point	700,000	700,000	700,000
Subtotal	76,700,000	74,200,000	76,170,000
Air Force: Seymour-Johnson AFB	2,950,000	2,950,000	2,950,000

MAJOR CONSTRUCTION PROGRAMS BY STATE—Continued

	DOD request	House allowance	Committee recommendation
Army National Guard:			
Edenton	$297,000	$297,000	$297,000
Radford	406,000	406,000	406,000
Albemarle			346,000
Reidsville			479,000
Subtotal	703,000	703,000	1,528,000
Air National Guard: Douglas MAP			550,000
Total	90,851,000	87,123,000	91,310,000
North Dakota:			
Air Force:			
Grand Forks AFB	1,594,000	1,594,000	1,594,000
Minot AFB	1,602,000	1,602,000	1,602,000
Subtotal	3,196,000	3,196,000	3,196,000
Defense agencies: Fuel Terminal, Grand Forks	375,000	375,000	375,000
Army National Guard: Devils Lake	247,000	247,000	247,000
Air National Guard: Hector Field	780,000	780,000	780,000
Total	4,598,000	4,598,000	4,598,000
Ohio:			
Air Force:			
Newark AFS	1,400,000	1,400,000	2,260,000
Rickenbacker AFB	1,121,000	1,121,000	1,121,000
Wright-Patterson AFB	13,600,000	15,930,000	13,600,000
Subtotal	16,121,000	18,451,000	16,981,000
Defense agencies: Defense Construction Supply Center, Columbus	932,000	932,000	932,000
Army National Guard:			
Canton	221,000	221,000	221,000
Hamilton	668,000	668,000	668,000
New Philadelphia	475,000	475,000	475,000
Subtotal	1,364,000	1,364,000	1,364,000
Army Reserve: Wooster	658,000	658,000	658,000
Air National Guard:			
Toledo Express Airport	970,000	970,000	970,000
Mansfield-Lahm Airport	490,000	490,000	490,000
Springfield MAP	580,000	580,000	580,000
Subtotal	2,040,000	2,040,000	2,040,000
Total	21,115,000	23,445,000	21,975,000
Oklahoma:			
Army: Fort Sill	27,122,000	27,122,000	24,897,000
Air Force:			
Altus AFB	1,111,000	1,111,000	1,111,000
Tinker AFB	2,482,000	2,482,000	2,482,000
Vance AFB	1,193,000	1,193,000	1,193,000
Subtotal	4,786,000	4,786,000	4,786,000
Army National Guard:			
Bartlesville	359,000	359,000	359,000
Chickasha	366,000	366,000	366,000
Haskell			310,000
Subtotal	725,000	725,000	1,035,000
Army Reserve: Okmulgee	569,000	569,000	569,000
Total	33,202,000	33,202,000	31,287,000
Oregon:			
Army National Guard: Forrest Grove	533,000	533,000	533,000

MAJOR CONSTRUCTION PROGRAMS BY STATE—Continued

	DOD request	House allowance	Committee recommendation
Pennsylvania:			
Army:			
Carlisle Barracks	$1, 601, 000	$1, 601, 000	$1, 601, 000
New Cumberland Army Depot	237, 000	237, 000	237, 000
Tobyanna Army Depot	1, 285, 000	1, 285, 000	1, 285, 000
Subtotal	3, 123, 000	3, 123, 000	3, 123, 000
Navy:			
Navy Air Development Center, Warminster	3, 610, 000	3, 610, 000	3, 610, 000
Naval Support Activity, Philadelphia	5, 700, 000	5, 700, 000	5, 700, 000
Ships Parts Control Center, Mechanicsburg	1, 120, 000	1, 120, 000	1, 120, 000
Philadelphia Naval Shipyard, Philadelphia	8, 370, 000	9, 570, 000	9, 570, 000
Subtotal	18, 800, 000	20, 000, 000	20, 000, 000
Defense agencies: Defense Depot, Mechanicsburg	1, 575, 000	1, 575, 000	1, 575, 000
Army Reserve:			
Fort Indiantown Gap	859, 000	859, 000	859, 000
Johnstown	1, 300, 000	1, 300, 000	1, 300, 000
Subtotal	2, 159, 000	2, 159, 000	2, 159, 000
Navy Reserve: Willow Grove	996, 000	996, 000	996, 000
Air National Guard: Harrisburg			700, 000
Total	26, 653, 000	27, 853, 000	28, 553, 000
Rhode Island:			
Navy:			
Naval Education and Training Center, Newport	4, 600, 000	4, 600, 000	4, 600, 000
Naval War College, Newport	500, 000	500, 000	500, 000
Surface Warfare Officers School, Newport	1, 750, 000	1, 750, 000	1, 750, 000
Subtotal	6, 850, 000	6, 850, 000	6, 850, 000
Defense agencies: DPDO, Davisville	314, 000	314, 000	314, 000
Army National Guard: Newport	621, 000	621, 000	621, 000
Air National Guard: Quonset State Airport	2, 030, 000	2, 030, 000	2, 030, 000
Total	9, 815, 000	9, 815, 000	9, 815, 000
South Carolina:			
Army: Fort Jackson	3, 534, 000		3, 534, 000
Navy:			
FBM Submarine Training Center, Charleston	800, 000	800, 000	800, 000
Marine Corps Recruit Depot, Parris Island	4, 000, 000		4, 000, 000
Naval Station, Charleston	10, 240, 000	5, 040, 000	10, 240, 000
Naval Shipyard, Charleston	11, 640, 000	20, 540, 000	18, 840, 000
Naval Weapons Station, Charleston	4, 340, 000	4, 340, 000	4, 340, 000
Polaris Missile Facility, Atlantic	6, 500, 000		6, 500, 000
Naval Supply Center, Charleston	1, 100, 000	1, 100, 000	1, 100, 000
Subtotal	38, 620, 000	31, 820, 000	45, 820, 000
Air Force:			
Myrtle Beach AFB	3, 899, 000	3, 899, 000	3, 899, 000
McEntire ANGB	230, 000	230, 000	230, 000
Shaw AFB		2, 500, 000	1, 290, 000
Subtotal	5, 629, 000	6, 629, 000	5, 419, 000
Defense agencies: Defense Fuel Supply Point, Charleston	532, 000	532, 000	532, 000
Army National Guard:			
Cheraw	434, 000	434, 000	434, 000
Newberry	826, 000	826, 000	826, 000
Subtotal	1, 260, 000	1, 260, 000	1, 260, 000
Air National Guard: McEntire ANGB	400, 000	400, 000	400, 000
Total	48, 475, 000	40, 641, 000	56, 965, 000

MAJOR CONSTRUCTION PROGRAMS BY STATE—Continued

	DOD request	House allowance	Committee recommendation
South Dakota:			
Air Force: Ellsworth AFB	$3,454,000	$3,454,000	$3,454,000
Army National Guard:			
Rapid City	977,000	977,000	977,000
Webster	133,000	133,000	133,000
Subtotal	1,110,000	1,110,000	1,110,000
Air National Guard: Joe Foss Field	260,000	260,000	260,000
Total	4,824,000	4,824,000	4,824,000
Tennessee:			
Army:			
Holston AAP	30,650,000	30,650,000	30,650,000
Milan AAP	1,239,000	1,239,000	637,000
Subtotal	31,889,000	31,889,000	31,287,000
Navy: Naval Air Station, Memphis	710,000	710,000	710,000
Air Force: Arnold Test Center	2,710,000	2,710,000	2,710,000
Defense agencies: Defense Depot, Memphis	3,555,000	3,555,000	3,555,000
Army National Guard:			
Knoxville	370,000	370,000	370,000	
Newport	451,000	451,000	451,000
Smyrna	458,000	458,000	458,000
Greenville			451,000
Subtotal	1,279,000	1,279,900	1,730,000
Air National Guard: McGhee-Tyson Airport			330,000
Total	40,143,000	40,143,000	40,322,000
Texas:			
Army:			
Corpus Christi Depot	278,000	278,000	278,000
Fort Bliss	4,758,000	1,209,000	4,758,000
Fort Hood	52,657,000	52,657,000	62,086,000
Fort Sam Houston	1,633,000	1,633,000	1,633,000
Red River Depot	476,000	476,000	1,289,000
Longhorn AAP	507,000	507,000	507,000
Subtotal	60,309,000	56,760,000	70,551,000
Navy:			
Naval Air Station, Chase Field	130,000	130,000	130,000
Naval Air Station, Kingsville	500,000	500,000	500,000
Subtotal	630,000	630,000	630,000
Air Force:			
Reese AFB	742,000	742,000	742,000
Dyess AFB	2,962,000	292,000	2,962,000
Kelly AFB	17,219,000	17,219,000	17,219,000
Lackland AFB	4,700,000	4,700,000	6,945,000
Randolph AFB	1,274,000	1,274,000	1,274,000
Carswell AFB	3,440,000	3,440,000	3,440,000
Laughlin AFB	329,000	329,000	329,000
Subtotal	30,666,000	27,996,000	32,911,000
Defense agencies: Defense Property Disposal Office, Fort Hood	555,000	555,000	555,000
Navy Reserve:			
El Paso	2,037,000	2,037,000	2,037,000
NAS Dallas			2,600,000
Subtotal	2,037,000	2,037,000	4,637,000
Air National Guard:			
NAS Dallas	950,000	950,000	950,000
Ellington AFB	450,000	450,000	450,000
Subtotal	1,400,000	1,400,000	1,400,000

MAJOR CONSTRUCTION PROGRAMS BY STATE—Continued

	DOD request	House allowance	Committee recommendation
Air Force Reserve:			
Bergstrom AFB	$550,000	$550,000	$550,000
Carswell AFB	1,370,000	1,370,000	1,680,000
Kelly AFB	2,420,000	2,420,000	2,420,000
Subtotal	4,340,000	4,340,000	4,650,000
Total	99,937,000	93,718,000	115,334,000
Utah:			
Air Force: Hill AFB	3,483,000	8,163,000	8,163,000
Defense agencies: Defense Depot, Ogden	1,573,000	1,573,000	1,573,000
Army National Guard:			
Camp Williams	1,000,000	1,000,000	1,000,000
Mount Pleasant	528,000	528,000	528,000
Subtotal	1,528,000	1,528,000	1,528,000
Air National Guard: Salt Lake City IAP	1,300,000	1,300,000	1,300,000
Total	7,884,000	12,564,000	12,564,000
Vermont:			
Army National Guard: Ethan Allen Range	382,000	382,000	382,000
Virginia:			
Army:			
Fort Belvoir	4,780,000	4,780,000	4,780,000
Fort Eustis	947,000	947,000	5,353,000
Fort Lee	3,131,000	3,131,000	3,131,000
Fort Monroe	550,000	550,000	550,000
Fort Pickett	260,000	260,000	260,000
Radford AAP	310,000	310,000	310,000
Subtotal	9,978,000	9,978,000	14,384,000
Navy:			
Communications Area Master Station, Atlantic	1,290,000	1,290,000	1,290,000
Fleet Combat Training Center, Dam Neck	6,330,000	6,330,000	6,330,000
Headquarters, Marine Corps, Arlington	9,000,000	12,000,000	9,000,000
Marine Corps Development and Education Command, Quantico	3,300,000	3,300,000	3,300,000
Naval Hospital, Quantico	1,800,000	1,800,000	1,800,000
Naval Air Station, Oceana	6,230,000	6,230,000	6,230,000
Naval Air Station, Norfolk	440,000	440,000	440,000
Naval Amphibious Base, Little Creek	4,100,000	4,100,000	4,100,000
Naval Regional Dental Center, Norfolk	7,400,000	7,400,000	7,400,000
Naval Shipyard, Norfolk	13,630,000	10,880,000	13,630,000
Naval Station, Norfolk	13,130,000	8,730,000	8,730,000
Naval Supply Center, Norfolk	5,310,000	5,310,000	5,310,000
Naval Weapons Station, Yorktown	12,680,000	12,680,000	9,880,000
Public Works Center, Norfolk	4,200,000	4,200,000	4,200,000
Surface Weapons Center, Dahlgren	10,700,000	3,400,000	3,400,000
Naval Air Rework Facility, Norfolk		4,000,000	4,000,000
Subtotal	99,540,000	92,090,000	89,040,000
Air Force: Langley AFB	1,239,000	1,239,000	3,539,000
Defense agencies:			
Defense Property Disposal Office, Fort Belvoir	755,000	755,000	755,000
Classified Activity	9,200,000	9,200,000	9,200,000
DDC, Alexandria	230,000		
DGSC, Richmond	546,000	546,000	546,000
Subtotal	10,731,000	10,501,000	10,501,000
Army National Guard:			
Gate City	210,000	210,000	210,000
Richmond	231,000	231,000	231,000
Subtotal	441,000	441,000	441,000
Army Reserve:			
Charlottesville	545,000	545,000	545,000
Fort Pickett	1,832,000	1,832,000	1,832,000
Subtotal	2,377,000	2,377,000	2,377,000
Total	124,306,000	116,626,000	120,282,000

MAJOR CONSTRUCTION PROGRAMS BY STATE—Continued

	DOD request	House allowance	Committee recommendation
Washington:			
Army:			
Fort Lewis	$7,277,000	$3,970,000	$9,053,000
Yakima Firing Center	1,270,000	1,270,000	1,270,000
Subtotal	8,547,000	5,240,000	10,323,000
Navy:			
Naval Supply Center, Puget Sound	2,700,000	2,700,000	2,700,000
Puget Sound Naval Shipyard, Bremerton	17,210,000	17,210,000	17,210,000
Naval Submarine Base, Bangor	16,640,000	16,255,000	16,255,000
Naval Air Station, Whidbay Island	9,500,000	9,500,000	9,500,000
Subtotal	46,050,000	45,665,000	45,665,000
Air Force:			
McChord Air Force Base	714,000	714,000	714,000
Fairchild AFB	1,325,000	1,325,000	1,325,000
Subtotal	2,039,000	2,039,000	2,039,000
Defense agencies:			
Defense Property Disposal Office, Fort Lewis	1,033,000	1,033,000	1,033,000
DCASMA, Seattle	193,000	193,000	193,000
DFSP, Mukilteo	334,000	334,000	334,000
Subtotal	1,560,000	1,560,000	1,560,000
Air Force Reserve: McChord AFB	400,000	400,000	400,000
Total	58,596,000	54,904,000	59,987,000
West Virginia: Navy: Naval Station, Sugar Grove	250,000	250,000	250,000
Wisconsin:			
Army: Fort McCoy	991,000	991,000	991,000
Army National Guard: Milwaukee	794,000	794,000	794,000
Total	1,785,000	1,785,000	1,785,000
Wyoming: Air Force: Francis E. Warren AFB	23,143,000	23,143,000	23,143,000
Various locations (Zone of Interior):			
Air Force: Various	2,308,000	1,308,000	688,000
Naval Reserve	500,000	500,000	500,000
Air National Guard	6,210,000	6,210,000	6,210,000
Air Force Reserve	1,000,000	1,000,000	1,000,000
Total	10,018,000	9,018,000	8,398,000
Total, Inside United States:			
Army	453,815,000	423,691,000	459,944,000
Navy	705,807,000	642,852,000	707,671,000
Air Force	388,803,000	361,357,000	434,891,000
Defense agencies	45,356,000	44,486,000	44,786,000
Army National Guard	44,532,000	44,532,000	49,509,000
Army Reserve	25,100,000	25,100,000	29,232,000
Navy Reserve	17,900,000	17,900,000	20,500,000
Air National Guard	35,590,000	35,590,000	41,480,000
Air Force Reserve	10,900,000	10,900,000	11,800,000
Total	1,727,803,000	1,606,408,000	1,799,813,000
OUTSIDE THE UNITED STATES			
Arab Republic of Egypt: Navy: Naval Medical Research Unit, Cairo	960,000	960,000	960,000
Bermuda: Navy: Naval Air Station	4,300,000	4,300,000	4,300,000
Germany:			
Army: Various locations	260,824,000	193,902,000	107,933,000
Air Force:			
Langerkopf AB	1,332,000	1,332,000	1,332,000
Ramstein AB	10,737,000	10,737,000	222,000
Zweibrucken AB	211,000	211,000	211,000
Sembach AB	270,000	270,000	270,000
Rhein Main AB	2,744,000	9,294,000	2,744,000
Various	72,410,000	40,509,000	
Subtotal	87,704,000	62,353,000	4,779,000

MAJOR CONSTRUCTION PROGRAMS BY STATE—Continued

	DOD request	House allowance	Committee recommendation
Defense agencies:			
Various locations	$870,000	$870,000	$870,000
Overseas dependent schools	35,850,000	35,850,000	35,850,000
Subtotal	36,720,000	36,720,000	36,720,000
Total	385,248,000	292,975,000	149,432,000
Greece: Navy: NAVCOMSTA, Nea Makri	310,000	310,000	
Guam:			
Navy: Naval Magazine	940,000	940,000	940,000
Air Force: Anderson AFB	1,120,000	1,120,000	1,120,000
Total	2,060,000	2,060,000	2,060,000
Iceland: Navy: Naval Station, Keflavik	6,450,000	6,450,000	4,670,000
Italy:			
Navy: Naval Air Facility, Sigonella	8,400,000	7,150,000	7,150,000
Air Force:			
Decimomannu AB	986,000		
Aviano AB	174,000	174,000	174,000
Various locations	5,059,000	1,800,000	
Subtotal	6,219,000	1,974,000	174,000
Total	14,619,000	9,124,000	7,324,000
Japan:			
Navy:			
Navy Supply Depot, Yokosuka	3,700,000	3,700,000	3,700,000
Marine Corps Air Station, Iwakuni	4,500,000	4,500,000	
Subtotal	8,200,000	8,200,000	3,700,000
Air Force: Kadena AB	6,263,000	6,263,000	
Total	14,463,000	14,463,000	3,700,000
Korea:			
Army: Various locations	9,490,000	8,580,000	7,580,000
Air Force:			
Osan AFB	7,515,000	7,515,000	7,515,000
Kunsan AB	6,858,000	6,858,000	6,858,000
Subtotal	14,373,000	14,373,000	14,373,000
Total	23,863,000	22,953,000	21,953,000
Kwajalein: Army: Kwajalein Missile Range	6,571,000	6,571,000	6,571,000
Netherlands: Air Force: Various locations	3,597,000	468,000	
Panama: Air Force: Howard AFB (total)	718,000	718,000	718,000
Philippines: Defense agencies: DPDO, Subic Bay	584,000	584,000	584,000
Puerto Rico:			
Navy: Naval Station, Roosevelt Roads	5,480,000	1,480,000	5,480,000
Army National Guard: Camp Santiago	268,000	268,000	268,000
Air National Guard: Puerto Rico IAP	510,000	510,000	710,000
Total	6,258,000	2,258,000	6,458,000
Scotland: Navy: Naval Communications Unit, Thurso	890,000	890,000	890,000
Spain:			
Navy: Naval Station, Rota	7,200,000	5,700,000	3,350,000
Air Force:			
Zaragoza AB	401,000	401,000	401,000
Torrejon AB	262,000	262,000	262,000
Subtotal	663,000	663,000	663,000
Defense agencies: Dependent School, Torrejon	8,950,000		8,950,000
Total	16,813,000	6,363,000	12,963,000

MAJOR CONSTRUCTION PROGRAMS BY STATE—Continued

	DOD request	House allowance	Committee recommendation
Turkey:			
Air Force:			
Incirlik AB	$516,000	$516,000	
Various locations	15,225,000	15,225,000	
Total	15,741,000	15,741,000	
United Kingdom:			
Air Force:			
Alconbury RAF	170,000	170,000	$170,000
Bentwaters RAF	893,000	893,000	893,000
Lakenheath RAF	215,000	215,000	215,000
Upper Heyford RAF	800,000	800,000	800,000
Woodbridge RAF	175,000	175,000	175,000
Mildenhall RAF	5,902,000		
Various	58,144,000	18,220,000	
Total	66,299,000	20,473,000	2,253,000
Various locations (overseas):			
Army: Various	90,000,000		
Navy: Various	1,663,000	1,663,000	1,663,000
Air Force: Various	2,800,000	2,800,000	2,800,000
Defense agencies: Various	48,890,000	90,890,000	90,890,000
Subtotal	143,353,000	95,353,000	95,353,000
Total outside United States:			
Army	366,885,000	209,053,000	122,084,000
Navy	44,793,000	38,043,000	33,103,000
Air Force	205,497,000	126,946,000	26,880,000
Defense agencies	95,144,000	128,194,000	137,144,000
Army National Guard	268,000	268,000	268,000
Air National Guard	510,000	510,000	710,000
Total	713,097,000	503,014,000	320,189,000
Planning and design:			
Army	67,400,000	64,400,000	67,400,000
Navy	49,300,000	46,300,000	49,300,000
Air Force	55,000,000	52,000,000	55,000,000
Defense agencies	11,400,000	9,400,000	11,400,000
Army National Guard	2,900,000	2,700,000	2,900,000
Army Reserve	5,500,000	5,300,000	5,500,000
Navy Reserve	1,500,000	1,300,000	1,500,000
Air National Guard	3,400,000	3,200,000	3,400,000
Air Force Reserve	1,300,000	1,100,000	1,300,000
Total	197,700,000	185,700,000	197,700,000
Exigent minor construction:			
Army	24,000,000	24,000,000	24,000,000
Navy	20,000,000	20,000,000	20,000,000
Air Force	18,000,000	18,000,000	18,000,000
Defense agencies	4,400,000	4,400,000	4,400,000
Army National Guard	2,000,000	2,000,000	2,000,000
Army Reserve	4,200,000	4,200,000	4,200,000
Navy Reserve	1,000,000	1,000,000	1,000,000
Air National Guard	2,000,000	2,000,000	2,000,000
Air Force Reserve	300,000	300,000	300,000
Total	75,900,000	75,900,000	75,900,000
Access roads:			
Army	5,000,000	5,000,000	5,000,000
Navy	1,000,000	1,000,000	1,000,000
Air Force			1,350,000
Total	6,000,000	6,000,000	7,350,000
Emergency construction—OSD	20,000,000	10,000,000	15,000,000
Grand total, construction	2,740,500,000	2,387,022,000	2,415,952,000
Family Housing/Homeowners Assistance	1,575,900,000	1,570,165,000	1,590,900,000
Grand total, Program	4,316,400,000	3,957,187,000	4,006,852,000
Less available financing	−63,400,000	−43,400,000	−69,150,000
General reductions		−68,900,000	
Total, new budget authority	4,253,000,000	3,844,887,000	3,937,702,000

COMPARATIVE STATEMENT OF NEW BUDGET (OBLIGATIONAL) AUTHORITY FOR 1978 AND BUDGET ESTIMATES AND AMOUNTS RECOMMENDED IN THE BILL FOR 1979

Agency and item	New budget (obligational) authority, fiscal year 1978	Budget estimates, new (obligational) authority, fiscal year 1979	New budget (obligational) authority recommended in House bill	Recommended by Senate committee	Increase (+) or decrease (−), Senate bill compared with—		
					Appropriations, new (obligational) authority, fiscal year 1978	Budget estimates, new (obligational) authority, fiscal year 1979	House bill, new (obligational) authority
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Planning and Design	($219,812,000)	($198,450,000)	$186,450,000	($198,450,000)	(−$21,362,000)		−$186,450,000
Military construction, Army	527,769,000	881,900,000	628,644,000	663,228,000	+135,459,000	−$218,672,000	+34,584,000
Military construction, Navy	403,056,000	820,900,000	683,695,000	811,074,000	+348,018,000	−9,826,000	+127,379,000
Military construction, Air Force	406,986,000	639,100,000	461,703,000	507,171,000	+100,185,000	−131,929,000	+45,468,000
Military construction, Defense agencies	58,009,000	176,300,000	183,280,000	187,730,000	+129,721,000	+11,430,000	+4,450,000
Transfer, not to exceed	(20,000,000)	(20,000,000)	(20,000,000)	(20,000,000)			
Military construction, Army National Guard	49,400,000	49,700,000	43,500,000	54,677,000	+5,277,000	+4,977,000	+11,177,000
Military construction, Air National Guard	43,300,000	41,500,000	35,800,000	47,590,000	+4,290,000	+6,090,000	+11,790,000
Military construction, Army Reserve	50,500,000	34,800,000	26,900,000	38,932,000	−11,568,000	+4,132,000	+12,032,000
Military construction, Naval Reserve	21,700,000	20,400,000	16,600,000	23,000,000	+1,300,000	+2,600,000	+6,400,000
Military construction, Air Force Reserve	11,200,000	12,500,000	8,900,000	13,400,000	+2,200,000	+900,000	+4,500,000
Total, military construction	1,631,920,000	2,677,100,000	2,089,022,000	2,346,802,000	+714,882,000	−330,298,000	+257,780,000
Family housing, Defense	1,460,140,000	1,690,100,000	1,688,615,000	1,708,600,000	+248,460,000	+18,500,000	+19,985,000
Portion applied to debt reduction	−115,840,000	−119,200,000	−119,200,000	−119,200,000	−3,360,000		
Total, family housing	1,344,300,000	1,570,900,000	1,569,415,000	1,589,400,000	+245,100,000	+18,500,000	+19,985,000
Homeowners assistance fund, Defense	1,500,000	5,000,000		1,500,000		−3,500,000	+1,500,000
Grand total, new budget (obligational) authority	2,977,720,000	4,253,000,000	3,844,887,000	3,937,702,000	+959,982,000	−315,298,000	+92,815,000

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Calendar No. 950

95TH CONGRESS, 2d Session } SENATE { REPORT No. 95-1020

CHILD NUTRITION AMENDMENTS OF 1978

JULY 19 (legislative day, MAY 17), 1978.—Ordered to be printed

Mr. EAGLETON, from the Committee on Appropriations, submitted the following

REPORT

[To accompany S. 3085]

The Committee on Appropriations, to which was referred the bill (S. 3085) to extend and amend the special supplemental food program and the child care food program, and for other purposes, pursuant to section 401(b) of Public Law 93-344, the Congressional Budget and Impoundment Control Act of 1974, having considered the same, reports thereon with amendments.

REFERRAL TO APPROPRIATIONS COMMITTEE

This bill was referred to the Appropriations Committee, pursuant to the provisions of section 401(b) of the Budget Act. As reported, the bill creates new entitlement authority that would cause budget authority for the Committee on Agriculture, Nutrition, and Forestry to exceed its allocation for fiscal year 1979 under section 302(b) of the Budget Act. The basic reason for this situation is that the bill creates a new entitlement for the Special Supplemental Feeding Program for Women, Infants and Children (WIC).

JURISDICTION OF THE APPROPRIATIONS COMMITTEE

In accordance with the Budget and Impoundment Control Act, the Committee's jurisdiction relates to the cost of the bill with respect to the new spending authority provided therein. Section 401(b)(3) states that, with respect to referrals of this nature:

"The Committee on Appropriations of each House shall have jurisdiction to report any bill or resolution referred to it under

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paragraph (2) with an amendment which limits the total amount of new spending authority provided in such bill or resolution."

Accordingly, the Committee agreed to consider that portion of the bill which brought about the referral to begin with; namely, the creation of up to $600 million in new spending (entitlement) authority for the WIC program in fiscal year 1979, the budget authority for which is not provided for in advance by appropriations acts.

Consideration of Cost Aspects of the Bill

During its consideration, the Committee focused on the cost of the WIC program under entitlement. The bill would create a new entitlement for WIC up to the following amounts:

Fiscal year:	
1979	$600,000,000
1980	800,000,000
1981	900,000,000
1982	950,000,000

The Committee was advised by the Budget Committee that this bill would cause the Senate Committee on Agriculture, Nutrition, and Forestry to exceed its allocation of budget authority in the First Concurrent Resolution for 1979 by an estimated $196 million. The Committee did not believe it would be appropriate to propose an amendment reducing the cost of the bill by this amount, because it believes that it can achieve the targets specified in the First Concurrent Resolution for 1979 (S. Con. Res. 80) through its review and action on other programs within Committee jurisdiction.

However, the Committee does believe a prudent reduction in the fiscal year 1979 cost of the WIC program (the only year that it took under consideration because of the nature of the referral) was warranted. Accordingly, the Committee is proposing an amendment that would reduct the program level by $50 million, providing $550 million in fiscal year 1979.

In addition to the actual 1979 cost, the Committee considered the underlying cost reason for the referral, which was the creation of a new entitlement. The Committee took note of a report from the Comptroller General dated April 13, 1978 (CED-78-98), on the subject of entitlements in general, and WIC in particular. In it, the Comptroller General warned against the creation of new entitlement authority for WIC or other programs because of the loss of congressional control. Furthermore, the General Accounting Office recommended that new entitlements be created only after thorough study and analysis has been made to see if such entitlement would be in the public's best interest.

Accordingly, the Committee has recommended an amendment that would delete the entitlement status of the WIC program for the last 2 of the 4 years authorized in this bill. This would permit WIC to be an entitlement program for 1979 and 1980, but remove entitlement thereafter. In proposing such an amendment, the Committee seriously considered deleting entitlement altogether. However, it appears that there are good and compelling reasons to retain a 2-year entitlement. This is based on the unusual history of WIC—a continuous series of impoundments, lawsuits, and court orders to

spend funds that remain in effect through September 1978. At the very minimum, these have, in the past, cast doubt on the continuation and/or level of program funding, which makes entitlement funding reasonable for a limited period of time to assure both administrators and recipients that the program will continue to be viable.

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Calendar No. 951

95TH CONGRESS, 2d Session | SENATE | REPORT No. 95-1021

URGENT SUPPLEMENTAL APPROPRIATIONS FOR THE DEPARTMENT OF AGRICULTURE

JULY 19 (legislative day, MAY 17), 1978.—Ordered to be printed

Mr. EAGLETON, from the Committee on Appropriations, submitted the following

REPORT

[To accompany H.J. Res. 1024]

The Committee on Appropriations, to which was referred the resolution (H.J. Res. 1024) making urgent supplemental appropriations for the Department of Agriculture, Agricultural Stabilization and Conservation Service, and for other purposes for the fiscal year ending September 30, 1978, reports the same to the Senate without amendment and with the recommendation that the joint resolution be passed.

SUMMARY OF THE BILL

The budget request on which this resolution is based is contained in House Documents 95-281 and 95-331. The accompanying joint resolution provides $57,145,000 in direct appropriations and $23,391,000 in increased transfer authority from the Commodity Credit Corporation to meet the urgent needs of the Agricultural Stabilization and Conservation Service.

DEPARTMENT OF AGRICULTURE

AGRICULTURAL STABILIZATION AND CONSERVATION SERVICE

This appropriation will provide funds for the Agricultural Stabilization and Conservation Service to meet the demands of increased workload brought about by passage of the Food and Agriculture Act of 1977 (Public Law 95-113) and changing economic conditions. It

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will primarily be used to handle increased certification, compliance, farm visits, disaster coverage expansion, loan activity, and aerial photography, all of which are functions of the Agricultural Stabilization and Conservation Service which is the principal agency responsible for carrying out the price support and related programs of the Commodity Credit Corporation.

The funding is principally for the cost of additional employees in county offices. In anticipation of passage of a program supplemental, the agency began staffing up and spending funds at an accelerated rate to implement the 1977 Food and Agriculture Act under deficiency apportionment procedures permitted by law. The Agricultural Stabilization and Conservation Service has advised the Committee that they have basically run out of money as of the first week of July; however, each of the approximately 3,000 county offices are in a slightly different cash availability position. The Department has directed the agency to continue to provide services pending action on this supplemental.

The Committee is not fully convinced that the agency has provided a complete justification for all of the increases in county office workload. However, it is deferring adjustments in requested county office strengths at this time and will continue to examine this matter. Accordingly, the Committee recommends approval of the resolution without amendment in order to insure the continued smooth functioning of the various farm price support and related programs.

BUDGETARY IMPACT OF H.J. Res. 1024 [1]

[In millions of dollars]

	Budget authority		Outlays	
	Committee allocation	Amount in bill	Committee allocation	Amount in bill
Comparison of amounts in the resolution with the Committee allocation to its subcommittees of amounts in the Second Concurrent Resolution for 1978	12,349	57	13,004	50
SUBCOMMITTEE ON AGRICULTURE, RURAL DEVELOPMENT AND RELATED AGENCIES				
Summary of functional category of 1978 budget amounts recommended in the resolution:				
350—Agriculture	.....	57	.....	50
Financial assistance to State and local governments for 1978 in the resolution	.....	.....	.....	.....
Projections of outlays associated with budget authority recommended in the resolution:				
1978	.....	.....	.....	50
1979	.....	.....	.....	7
1980	.....	.....	.....	1
1981	.....	.....	.....	.....
1982	.....	.....	.....	.....
Future year	.....	.....	.....	.....

[1] Prepared by the Congressional Budget Office pursuant to sec. 308a, Public Law 93-344.

Calendar No 952

95TH CONGRESS
2d Session

SENATE

REPORT
No. 95-1022

COMMENDING THE AMERICAN INDIANS PARTICIPATING IN THE LONGEST WALK

JULY 19 (legislative day, MAY 17), 1978.—Ordered to be printed

Mr. ABOUREZK, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. Res. 502]

The Committee on the Judiciary, to which was referred the resolution (S. Res. 502), to commend the American Indians participating in the Longest Walk, having considered the same, reports favorably thereon, with amendments, and recommends that the resolution be agreed to.

AMENDMENTS

The title of the resolution should be amended by striking "Native Americans" and inserting in lieu thereof "American Indians".

In the first line of the preamble strike "Native Americans" and insert in lieu thereof "American Indians".

In the third line of the preamble strike "Native American" and insert in lieu thereof "American Indian".

In the fourth line of the preamble strike "Native Americans" and insert in lieu thereof "American Indians".

In the sixth line of the preamble strike "Native Americans;" and insert in lieu thereof "American Indian".

In the 11th and 12th lines of the preamble strike "Native Americ- insert in lieu thereof "American Indians".

On page 2, line 2, strike "Native Americans" and insert in lieu thereof "American Indians".

On page 2, line 4, strike "Native Americans." and insert in lieu thereof "American Indians."

PURPOSE OF THE AMENDMENTS

The purpose of the amendments is to change the references in the resolution from "Native Americans" to "American Indians" to more accurately reflect the intent of the resolution.

PURPOSE OF THE RESOLUTION

The purpose of the resolution is to recognize and honor the American Indians participating in the longest walk for their efforts to provide a peaceful and meaningful opportunity for the discussion of the concerns of American Indians.

STATEMENT

The longest walk began on February 11, 1978, when a small group of Indians began their cross-country walk from California to Washington, D.C. Their purpose was to show their concern on a number of issues related to the status of Indians and Indian tribes.

In the beginning, 24 persons pledged to walk the 3,000-mile, coast-to-coast trip. As the walk passed through States and Indian communities, more persons joined. The group has now reached Washington, and its numbers have swelled to about 3,000.

Their stay here has been marked by dignity as they have sought to draw attention to the fact that traditional Indian values and lifestyles are seemingly being engulfed by modern developments.

The committee commends this group for seeking a peaceful expression of their views and recommends that this resolution be agreed to.

COST

The enactment of this bill will entail no expense to the Government.

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Calendar No. 953

95TH CONGRESS
2d Session

SENATE

REPORT
No. 95-1024

LEGISLATIVE BRANCH APPROPRIATIONS, 1979

JULY 19 (legislative day, MAY 17), 1978.—Ordered to be printed

Mr. SASSER, from the Committee on Appropriations, submitted the following

REPORT

[To accompany H.R. 12935]

The Committee on Appropriations, to which was referred the bill (H.R. 12935) making appropriations for the Legislative Branch for the fiscal year ending September 30, 1979, and for other purposes, reports the same to the Senate with various amendments and presents herewith information relative to the changes made.

Amount of estimates considered by House	$948, 149, 500
Amount of bill passed by House	922, 491, 800
Amount of increase by Senate committee (primarily for Senate operations not considered by House)	195, 752, 600
Amount of bill as reported by Senate	1, 118, 244, 400
Amount of appropriations, 1978 (including supplemental items contained in the bill)	1, 003, 049, 500
Amount of estimates considered by Senate committee	1, 143, 824, 100
The bill as reported to the Senate:	
Under the estimates for 1979	25, 579, 700
Over the appropriations for 1978	115, 194, 900

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SUMMARY OF BILL

The bill, as recommended by the Committee, provides appropriations for fiscal year 1979 totaling $741,896,100 for congressional operations, and $376,348,300 for related agencies. Supplemental appropriations for fiscal year 1978 totaling $12,801,700 are also included in the bill for congressional operations.

A summary of the recommendations follows:

Title	Amount (fiscal year) 1978	1979
Congressional operations	$666,377,300	$741,896,100
Related agencies	336,672,200	376,348,300
Total	1,003,049,500	1,118,244,400

In accord with long-standing custom, the House of Representatives did not consider budget estimates in the amount of $185,182,000 for the financing of the Senate; and estimates amounting to $10,492,600 for Senate items under the jurisdiction of the Architect of the Capitol. Hence, these estimates are not incorporated into the tabulations in the House report, and account in total for the increase recommended by the Committee over the House bill.

A comparative table showing the appropriations for fiscal year 1978, the budget estimates as amended for fiscal year 1979, the House allowance, and the amounts recommended by the Committee, is printed at the conclusion of the report. A table summarizing the bill follows:

LEGISLATIVE BRANCH APPROPRIATION BILL FOR FISCAL YEAR 1979

SUMMARY

Agency and item	New budget (obligational) fiscal year 1978	Budget estimates of new budget (obligational) authority fiscal year 1979	New budget (obligational) authority recommended in House bill	New budget (obligational) authority recommended by Senate Committee	Increase (+) or decrease (−), Senate bill compared with—		
					New budget (obligational) authority fiscal year 1978	New budget (obligational) authority fiscal year 1979	House bill
TITLE I—CONGRESSIONAL OPERATIONS							
Senate	166, 224, 900	185, 182, 000		185, 064, 000	+18, 839, 100	−118, 000	+185, 064, 000
House of Representatives	282, 672, 100	306, 049, 900	306, 016, 400	306, 016, 400	+23, 344, 300	−33, 500	
Joint Items	56, 903, 600	73, 773, 900	73, 727, 100	73, 727, 100	+16, 823, 500	−46, 800	
Office of Technology Assessment	7, 400, 000	10, 000, 000	9, 700, 000	9, 700, 000	+2, 300, 000	−300, 000	
Congressional Budget Office	10, 400, 000	11, 368, 000	11, 172, 000	11, 368, 000	+968, 000		+196, 000
Architect of the Capitol (except library buildings and grounds)	49, 307, 700	60, 613, 500	46, 014, 000	56, 506, 600	+7, 198, 900	−4, 106, 900	+10, 492, 600
Congressional Research Service, Library of Congress	21, 795, 000	26, 379, 000	25, 553, 000	25, 553, 000	+3, 758, 000	−826, 000	
Congressional printing and binding, Government Printing Office	71, 674, 000	73, 961, 000	73, 961, 000	73, 961, 000	+2, 287, 000		
Total, title I—congressional operations	666, 377, 300	747, 327, 300	546, 143, 500	741, 896, 100	+75, 518, 800	−5, 431, 200	+195, 752, 600
TITLE II—RELATED AGENCIES							
Botanic Garden	1, 283, 000	1, 391, 600	1, 392, 000	1, 392, 000	+109, 000	+400	
Library of Congress (except Congressional Research Service)	128, 953, 600	167, 006, 500	149, 093, 300	149, 093, 300	+20, 139, 700	−17, 913, 200	
Library buildings and grounds, Architect of the Capitol	2, 169, 100	2, 794, 700	2, 776, 000	2, 776, 000	+606, 900	−18, 700	
Copyright Royalty Tribunal	726, 000	935, 000	805, 000	805, 000	+79, 000	−130, 000	
Government Printing Office (except congressional printing and binding)	34, 703, 500	34, 676, 000	34, 676, 000	34, 676, 000	−27, 500		
General Accounting Office	167, 000, 000	187, 843, 000	185, 756, 000	185, 756, 000	+18, 756, 000	−2, 087, 000	
Cost-Accounting Standards Board	1, 837, 000	1, 850, 000	1, 850, 000	1, 850, 000	+13, 000		
Total, title II—related agencies	336, 672, 200	396, 496, 800	376, 348, 300	376, 348, 300	+39, 676, 100	−20, 148, 500	
Grand total, new budget (obligational) authority	1, 003, 049, 500	1, 143, 824, 100	922, 491, 800	1, 118, 244, 400	+115, 194, 900	−25, 579, 700	+195, 752, 600

HIGHLIGHTS OF THE BILL

The total amount of the bill is $1,118 million, a decrease of $26 million below the budget estimate. In addition, the total amount in the bill is subject to a further reduction of 5 percent pursuant to section 311 of the bill which provides:

> Of the total budget authority provided in this Act, for payments not required by law, five per centum shall be withheld from obligation and expenditure.

The total amount is within the $1.2 billion ceiling established in the First Concurrent Resolution on the fiscal year 1979 budget.

The principal change from the House bill is the addition of Senate items which the House did not consider in the amount of $195 million, including $10 million for Senate items under the jurisdiction of the Architect of the Capitol.

The total year-to-year increase of $115 million for the legislative branch is more apparent than real. Currently pending are $36 million worth of fiscal year 1978 supplemental requests, primarily for the October 1, 1977, Government-wide comparability pay increase. These requests have already been approved by the Legislative Branch Subcommittee of the House Committee on Appropriations. Assuming enactment of the supplemental requests, the fiscal year 1978 funding level for the legislative branch would amount to $1,040 million. When compared with the fiscal year 1979 level of $1,118 million recommended in the accompanying bill, the year-to-year increase would be $78 million or 7.5 percent which will be further reduced by the 5 percent reduction provision.

Finally, there are no funds included in the bill for construction of the Hart Senate Office Building or the James Madison Memorial Library Building. It is anticipated that budget requests relating to these two construction projects will be considered by the Committee this summer as part of the fiscal year 1978 supplemental appropriations bill.

Title I—Congressional Operations

The House, in its action on the 1978 Legislative Branch Appropriations bill, divided the bill into four titles. Title I—Congressional operations contains the appropriations for the actual operation of the Congress including the House, Senate, joint items, the Office of Technology Assessment, the Congressional Budget Office, and the Architect of the Capitol (except Library of Congress items). The Congressional Research Service and Congressional printing and binding items have been lifted from the budgets of the Library of Congress and the Government Printing Office, respectively, as they directly support the work of the Congress.

Title II—Related Agencies

Title II—related agencies contains the budget for several activities which do not provide primary support to the Congress. For instance, most of the activities of the Library of Congress, except the Congressional Research Service, are carried in this title. This includes such Library activities as the program to provide books for the blind and physically handicapped, the operation of the Copyright Office, and Library services to the public and to the Government of the United States.

As was noted earlier, congressional printing and binding appropriations of the Government Printing Office are contained in title I. The remaining activities of GPO finances general governmental functions such as the printing and binding of the United States Code and its supplements and various Federal Register program publications and selling to the general public at the direction of the Congress.

Although about one-third of the workload of the General Accounting Office is in direct support of the Congress, including work mandated by statute or requested by committees and Members of Congress, the majority of that agency's activities is self-initiated (as opposed to Congressional directed work) and is directed toward the improvement of the operation of the Federal Government in the areas of review and evaluation of programs, as well as accounting and financial management improvements. It is, therefore, carried in Title II of the bill.

The Botanic Garden, Copyright Royalty Tribunal, and Cost-Accounting Standards Board round out the agencies included in Title II.

TITLE III—GENERAL PROVISIONS

Title III contains the general provisions applicable to the entire bill and represents no change from the practice in the past.

FORMULATION OF 1980 BUDGET

It is the Committee's desire that the fiscal year 1980 estimates be submitted in accordance with the new structure. All agencies should follow this procedure in formulating next year's budget requests and justification materials. In addition, the Committee will expect all justifications, including such modifications as required by the Committee staff, to be submitted no later than December 15, 1978. The Committee commends the Secretary of the Senate, the Financial Clerk of the Senate, and the Senate Sergeant at Arms for their cooperation in greatly improving the Senate budget process. The Architect of the Capitol and his staff are also to be commended for implementing major improvements in the formulation and presentation of the fiscal year 1979 budget request. The Committee will expect, and has been assured, that the fiscal year 1980 process will reflect further refinements and more timely preparation of detailed justifications so that the December 15 deadline can be met.

ITEMS OF APPROPRIATION RECOMMENDED WITHOUT STATUTORY AUTHORITY

Historically, the Legislative Branch Appropriation Act serves in the Senate as a vehicle not only for appropriations but statutory authority for many of the housekeeping functions of the Senate. Many of the allowances for Senators and their staffs, the creation of new positions for the Senate, the transfer of positions, the changing of position titles, and the fixing of salaries are among the examples of the amendments carried in the Legislative Branch Appropriation Act. As is the custom, these items are printed in the report together with a short explanatory statement.

TITLE I—CONGRESSIONAL OPERATIONS—SENATE

COMPENSATION AND MILEAGE OF THE VICE PRESIDENT AND SENATORS AND EXPENSE ALLOWANCES OF THE VICE PRESIDENT, THE LEADERS, AND WHIPS OF THE SENATE

COMPENSATION AND MILEAGE OF THE VICE PRESIDENT AND SENATORS

1978 appropriation	$6,474,300
1979 budget estimate	6,480,000
House allowance	
Committee recommendation	6,480,000

The committee recommends an appropriation of $6,480,000 which is an increase of $5,700 over the 1978 appropriation and the same as the budget estimate.

This appropriation includes funds for the salaries of the Vice-President and Senators, agency contributions for retirement, life and health insurance, and the statutory mileage allowance for the President of the Senate and Senators for traveling to and returning from each regular session of the Congress.

The mileage allowance for Senators is authorized by the act of July 28, 1866 (2 U.S.C. 43), payable "* * * at the rate of 20 cents per mile, to be estimated by the nearest route usually traveled in going to and returning from each regular session."

The mileage allowance for the President of the Senate is authorized by the act of July 8, 1935 (2 U.S.C. 43a), and is payable "* * * at the same rate and in the same manner as now allowed by law to Senators, * * *."

Additional transportation expenses for official Senate business are funded under the heading "Contingent Expenses of the Senate, Miscellaneous Items."

The committee is concerned that there be no duplication of payments for travel and directs the Financial Clerk of the Senate to continue to closely monitor both accounts to assure that no duplicate payments are paid.

The fiscal year 1979 requested increase of $5,700 over the fiscal year 1978 level is required to cover the increased cost of health insurance contributions effective January 1, 1978.

EXPENSE ALLOWANCES OF THE VICE PRESIDENT, MAJORITY AND MINORITY LEADERS AND MAJORITY AND MINORITY WHIPS

1978 appropriation	$25,000
1979 budget estimate	25,000
House allowance	
Committee recommendation	25,000

The Committee recommends an appropriation of $25,000, which is the same as the 1978 appropriation and the budget estimate.

This appropriation includes funds for the expense allowances of the Vice President, the Majority and Minority Leaders, and the Majority and Minority Whips.

The expense allowance for the Vice President was first appropriated for by Public Law 81–71, effective January 20, 1949.

The expense allowance of the Majority and Minority Leaders was first appropriated for by Public Law 84–242, effective July 1, 1955.

The expense allowance of the Majority and Minority Whips was first appropriated for by the Supplemental Appropriations Act, 1977 (Public Law 95–26), effective April 1, 1977.

Salaries, Officers and Employees

The following series of appropriations includes funds for salaries only for fifteen (15) functions of the Senate and agency contributions and longevity compensation as authorized by law.

Of the 15 functions, seven are funded with lump sum allowances, six are funded exclusively with statutory positions, and two are funded with a combination of statutory positions and a lump sum allowance as follows:

LUMP SUM ALLOWANCE

Vice President; Majority and Minority Leaders; Majority and Minority Whips; Conference Committees; Administrative, Clerical, and Legislative Assistance to Senators; and Secretaries for the Majority and Minority.

STATUTORY POSITIONS ONLY

President Pro Tempore; Deputy President Pro Tempore; Majority and Minority Leaders (Floor); Secretaries to the Conference of the Majority and Minority; Chaplain; and Sergeant at Arms.

STATUTORY POSITIONS AND LUMP SUM ALLOWANCE

Secretary of the Senate; and Committee Employees.

OFFICE OF THE VICE PRESIDENT

1978 appropriation	$723,000
1979 budget estimate	767,000
House allowance	
Committee recommendation	767,000

The Committee recommends an appropriation of $767,000, which is $44,000 above the 1978 appropriation and the same as the budget request.

This appropriation includes funds for the salaries of the administrative and clerical staff for the Office of the Vice President. The increase over the 1978 appropriation is required to finance the salary of one additional senior staff position.

The Committee has also included a fiscal year 1978 supplemental budget estimate in the amount of $35,500, which was requested to cover the cost of the October 1, 1977, Government-wide comparability pay increase.

OFFICE OF THE PRESIDENT PRO TEMPORE

1978 appropriation	$116,000
1979 budget estimate	116,000
House allowance	-------
Committee recommendation	116,000

The Committee recommends an appropriation of $116,000, which is the same as the 1978 appropriation and the budget estimate.

This appropriation includes funds for three (3) statutory positions for the Office of the President Pro Tempore. The positions for the Office were created by Section 5 of Senate Resolution 17, agreed to January 10, 1977.

The Committee has also included a fiscal year 1978 supplemental budget estimate in the amount of $4,900, which was requested to cover the cost of the October 1, 1977, Government-wide comparability pay increase.

OFFICE OF DEPUTY PRESIDENT PRO TEMPORE

1978 appropriation	$111,100
1979 budget estimate	116,000
House allowance	-------
Committee recommendation	-------

The Committee has deleted the request of $116,000 for fiscal year 1979 as well as the fiscal year 1978 supplemental budget request. Both estimates were formulated prior to the death of the late Deputy President pro tempore of the Senate, the Honorable Hubert H. Humphrey.

OFFICES OF THE MAJORITY AND MINORITY LEADERS

1978 appropriation	$411,000
1979 budget estimate	411,000
House allowance	-------
Committee recommendation	411,000

The Committee recommends an appropriation of $411,000, which is the same as the 1978 appropriation and the budget estimate.

This appropriation includes funds for the salaries of the administrative and clerical staff of the Offices of the Majority and Minority Leaders. The offices were created and funded by Public Law 91–145, effective November 1, 1969. The fiscal year allowance for each office is $205,500.

The Committee has also included a fiscal year 1978 supplemental budget estimate in the amount of $27,600, which was requested to cover the cost of the October 1, 1977, Government-wide comparability pay increase.

FLOOR ASSISTANTS TO THE MAJORITY AND MINORITY LEADERS

1978 appropriation	$103,000
1979 budget estimate	103,000
House allowance	-------
Committee recommendation	103,000

The Committee recommends an appropriation of $103,000, which is the same as the 1978 appropriation and the budget estimate.

This appropriation contains funds for two recently established positions previously funded in the Office of the Secretary of the Senate but which more properly come under the jurisdiction of the Majority

and Minority Leaders. The old positions of Assistant to the Majority and Assistant to the Minority were abolished effective April 1, 1977 when the new positions of Assistant to the Majority (Minority) Leader for Floor Operations were established.

The Committee has also included a fiscal year 1978 supplemental budget estimate in the amount of $100 which was requested to cover the cost of the October 1, 1977, Government-wide comparability pay increase.

OFFICES OF THE MAJORITY AND MINORITY WHIPS

1978 appropriation	$239,000
1979 budget estimate	239,000
House allowance	
Committee recommendation	239,000

The Committee recommends an appropriation of $239,000, which is the same as the 1978 appropriation and the budget estimate.

This appropriation includes funds for the salaries of the administrative and clerical staff of the Offices of the Majority and Minority Whips. The offices were created and funded by Public Law 84–242 effective July 1, 1955. The fiscal year allowance for each office is $119,500.

The Committee has also included a fiscal year 1978 supplemental budget estimate in the amount of $16,800, which was requested to cover the cost of the October 1, 1977, Government-wide comparability pay increase.

OFFICES OF THE SECRETARIES OF THE CONFERENCE OF THE MAJORITY AND THE CONFERENCE OF THE MINORITY

1978 appropriation	$132,000
1979 budget estimate	132,000
House allowance	
Committee recommendation	132,000

The Committee recommends an appropriation of $132,000, which is the same as the 1978 appropriation and the budget estimate.

This appropriation contains funds for two (2) statutory positions for the Office of the Secretary of the Conference of the Majority and two (2) statutory positions for the Office of the Secretary of the Conference of the Minority. The offices were created by Section 6 of Senate Resolution 17, agreed to January 10, 1977.

The Committee has also included a fiscal year 1978 supplemental budget estimate in the amount of $4,700, which was requested to cover the cost of the October 1, 1977, Government-wide comparability pay increase.

OFFICE OF THE CHAPLAIN

1978 appropriation	$40,000
1979 budget estimate	40,000
House allowance	
Committee recommendation	40,000

This appropriation contains funds for the salary of the Chaplain and a Secretary to the Chaplain.

The Committee recommends an appropriation of $40,000, which is the same as the 1978 appropriation and the budget estimate.

The Committee has also included a fiscal year 1978 supplemental budget estimate in the amount of $3,200, which was requested to cover the cost of the October 1, 1977, Government-wide comparability pay increase.

OFFICE OF THE SECRETARY

1978 appropriation	$3,426,000
1979 budget estimate	4,116,000
House allowance	
Committee recommendation	4,116,000

The Committee recommends an appropriation of $4,116,000, which is an increase of $690,000 over the 1978 appropriation and the same as the budget estimate.

This appropriation contains funds for 136 statutory positions, a lump sum allowance for the employment and adjustment of salaries of personnel in the Disbursing Office, and an Administrative Fund for the employment of personnel as authorized by Section 244 of the Legislative Reorganization Act of 1946, as amended (2 U.S.C. 74b).

The fiscal year 1979 budget request for the Office of the Secretary proposed four changes. First, an increase of $500,000 was requested to maintain the fiscal year 1978 obligation level in fiscal year 1979. This requirement arises because fiscal year 1978 operations totaling $3,926,000 were financed with a $500,000 carryover from fiscal year 1977 and $3,426,000 in new budget authority appropriated for fiscal year 1978. Consequently, a year-to-year increase of $500,000 is required to maintain the fiscal year 1978 obligation level of $3,926,000 in fiscal year 1979. Secondly, an increase of $159,310 and five positions was requested for the Office of Classified National Security Information which was established by Senate Resolution 252, agreed to on August 5, 1977, and which office is currently being funded from the Contingent Fund of the Senate. This increase is actually a shift of funding in the Senate budget rather than a request to fund a new activity. Thirdly, an increase of $20,406 was requested for a new position to handle increased workloads in the Senate library. Finally, an amount of $9,845 was requested for 14 salary increases and 10 salary decreases. The Committee recognizes that the requested increase is more apparent than real, and that the operating level proposed for the Office of the Secretary remains virtually unchanged from the previous year. Consequently, the Committee recommends that the proposed changes recommended by the Secretary be adopted.

The committee also recommends that any requirements for additional personnel in the Disbursing Office, such as an increase in staff for the budgeting process and for other staff responsibilities, be met by the utilization of funds already allocated for that Office rather than by a supplemental appropriation.

The Committee has also included a fiscal year 1978 supplemental budget estimate in the amount of $220,800 which was requested to cover the cost of the October 1, 1977, Government-wide comparability pay increase.

The Committee has included the following proviso in the bill to accomplish the various position increases and decreases, and establish the new positions for fiscal year 1979:

OFFICE OF THE SECRETARY

Provided, That, effective October 1, 1978, the Secretary may appoint and fix the compensation of a Staff Assistant at not to exceed $27,745 per annum in lieu of not to exceed $25,776 per annum; an Assistant Reporter of Debates at not

to exceed $33,115 per annum in lieu of not to exceed $35,084 per annum; an Assistant Keeper of Stationery at not to exceed $30,072 per annum in lieu of not to exceed $27,566 per annum; a Chief Clerk, Stationery Room, at not to exceed $21,480 per annum in lieu of not to exceed $19,332 per annum; a Bookkeeper, Stationery Room, at not to exceed $19,690 per annum in lieu of not to exceed $17,542 per annum; a Senior Counter Clerk, Stationery Room, at not to exceed $15,752 per annum in lieu of a Clerk at not to exceed $14,678 per annum; a Secretary to Parliamentarian at not to exceed $20,585 per annum in lieu of not to exceed $18,258 per annum; an Assistant Journal Clerk at not to exceed $34,368 per annum in lieu of not to exceed $21,480 per annum; a Counter Clerk, Stationery Room, at not to exceed $14,678 per annum in lieu of an Information Clerk, Digest, at not to exceed $11,277 per annum; a Counter Clerk, Stationery Room, at not to exceed $14,678 per annum in lieu of a Clerk at not to exceed $13,962 per annum; an Associate Historian at not to exceed $26,671 per annum in lieu of not to exceed $23,628 per annum; a Photo Historian at not to exceed $25,955 per annum in lieu of not to exceed $28,998 per annum; a Secretary at not to exceed $20,585 per annum in lieu of not to exceed $21,480 per annum; a Journal Clerk at not to exceed $44,034 per annum in lieu of not to exceed $45,645 per annum; a Secretary at not to exceed $20,585 per annum in lieu of not to exceed $19,332 per annum; a Second Assistant Journal Clerk at not to exceed $27,566 per annum in lieu of a Clerk of Enrolled Bills at not to exceed $25,776 per annum; a Legislative Clerk at not to exceed $44,034 per annum in lieu of not to exceed $45,645 per annum; an Assistant Legislative Clerk at not to exceed $34,368 per annum in lieu of not to exceed $44,034 per annum; a Second Assistant Legislative Clerk at not to exceed $27,566 per annum in lieu of not to exceed $32,578 per annum; a Technical Advisor at not to exceed $32,041 per annum in lieu of not to exceed $35,084 per annum; a Bill Clerk at not to exceed $32,578 per annum in lieu of not to exceed $29,177 per annum; an Assistant Bill Clerk at not to exceed $25,776 per annum in lieu of not to exceed $21,480 per annum; a Terminal Operator at not to exceed $12,351 per annum in lieu of a Clerk, Public Records Office, at not to exceed $16,110 per annum; a Messenger at not to exceed $12,172 per annum in lieu of a Reference Assistant at not to exceed $14,678 per annum; a Technical Services Specialist in the Library at not to exceed $20,406 per annum; and in the Office of Classified National Security Information: a Director at not to exceed $50,478 per annum; a Professional Staff Member at not to exceed $40,096 per annum; a Classified Documents Specialist at not to exceed $27,566 per annum; and two Secretaries at not to exceed $20,585 per annum each: *Provided further*, That the provisions of the preceding proviso shall not apply to the position of Legislative Clerk or Assistant Legislative Clerk so long as the position is held by an individual who has held the position continuously since December 31, 1977.

COMMITTEE EMPLOYEES

1978 appropriation	$9, 528, 000
1979 budget estimate	10, 528, 000
House allowance	
Committee recommendation	10, 528, 000

The Committee recommends an appropriation of $10,528,000, which is an increase of $1,000,000 over the 1978 appropriation and the same as the budget estimate.

This appropriation contains funds for the professional and clerical staffs of all standing committees of the Senate including the Select Committee on Small Business as authorized by the Legislative Reorganization Act of 1946, as amended, and Senate Resolutions.

The Committee recommendation for fiscal year 1979 reflects the following change: an increase of $1,000,000 which is required to provide the fiscal year 1978 obligation level in fiscal year 1979.

The Committee recognizes that subsequent to submission of the fiscal year 1979 President's budget, the Special Committee on Aging attained the status of a standing committee under authority of Senate Resolution 376, agreed to March 6, 1978. Because of this action, the fiscal year 1979 budget request is understated by $469,696 which is the annual funding level for the new standing committee. The Committee has taken this matter into account in its review and anticipates that the costs associated with the recent establishment of this new standing committee will be absorbed in fiscal years 1978 and 1979.

The Committee has also included a fiscal year 1978 supplemental budget estimate in the amount of $243,300 which was requested to cover the cost of the October 1, 1977, Government-wide comparability pay increase.

CONFERENCE COMMITTEES

1978 appropriation	$688, 000
1979 budget estimate	750, 000
House allowance	
Committee recommendation	750, 000

The Committee recommends an appropriation of $750,000, which is an increase of $62,000 over the 1978 appropriation and the same as the budget estimate.

This appropriation contains funds for the salaries of the professional, administrative, and clerical staffs of the Conference of the Majority and Minority. The fiscal year allowance for each conference is $375,000. The Committee recommendation would provide an approximate 10 percent increase for possible salary adjustments.

The Committee has also included a fiscal year 1978 supplemental budget estimate in the amount of $52,300, which was requested to cover the cost of the October 1, 1977, Government-wide comparability pay increase.

ADMINISTRATIVE, CLERICAL, AND LEGISLATIVE ASSISTANCE TO SENATORS

1978 appropriation	$60, 665, 000
1979 budget estimate	70, 881, 000
House allowance	
Committee recommendation	70, 881, 000

The Committee recommends an appropriation of $70,881,000, which is an increase of $10,216,000 over the 1978 appropriation and the same as the budget estimate.

This appropriation contains funds for the salaries of the administrative and clerical staffs of Senators. The allowance is based on the population of States beginning with States with a population of less than 2 million to States with a population of 21 million or more for administrative and clerical assistance and a further allowance for legislative assistance, based on committee assignments, as authorized by the Legislative Branch Appropriation Act, 1978 (Public Law 95–94).

The Committee recommendation for fiscal year 1979 reflects the merger of appropriation "Legislative Assistance to Senators" into this appropriation. The budget request for this appropriation proposed two changes. First, an increase of $4,000,000 was requested to maintain the fiscal year 1978 obligation level in fiscal year 1979. This requirement arose because fiscal year 1978 operations totaling $64,665,000 were financed with a $4,000,000 carryover of unused funds from fiscal year 1977 and $60,665,000 in new budget authority appropriated in fiscal year 1978. Consequently, a year-to-year increase of $4,000,000 is required to maintain the fiscal year 1978 obligation level of $64,665,000 in fiscal year 1979. Secondly, an increase of $6,216,000 was requested to fully fund the newly merged Legislative Assistance account so that the budgeting practice for it would match the practice employed for budgeting for Members' clerk hire. This change in budgeting is also required to accommodate the increased usage of this allowance by Members.

The Committee has also included a fiscal year 1978 supplemental budget estimate in the amount of $4,464,100, which was requested to cover the cost of the October 1, 1977, Government-wide comparability pay increase.

OFFICE OF SERGEANT AT ARMS AND DOORKEEPER

1978 appropriation	$17,900,000
1979 budget estimate	19,803,000
House allowance	
Committee recommendation	19,803,000

The Committee recommends an appropriation of $19,803,000, which is an increase of $1,903,000 over the 1978 appropriation and the same as the budget estimate.

This appropriation contains funds for the salaries of 1,240 statutory positions under the Office of Sergeant at Arms and Doorkeeper. The Sergeant at Arms is also authorized to use not to exceed $45,000 of unobligated funds each fiscal year for the employment of Special Deputies.

The Committee recommendation for fiscal year 1979 includes a requested increase of $500,000 to maintain the fiscal year 1978 obligation level in fiscal year 1979. The requirement arose because fiscal year 1978 operations totaling $18,400,000 were financed with a $500,000 carryover of unused funds from fiscal year 1977 and $17,900,000 in new budget authority appropriated in fiscal year 1978. Consequently, a year-to-year increase of $500,000 is required to maintain the fiscal year 1978 obligation level of $18,400,000 in fiscal year 1979. Most of the additional increase relates to a request for 52 new positions for the Senate Computer Center which would have raised the staff to 208 positions. The Committee, with the cooperation of the Committee on Rules and Administration and the Senate

Sergeant at Arms, has reviewed this request and recommends a reduction of 23 positions below the budget request. This reduction was offset by several late changes elsewhere in the budget of the Sergeant at Arms.

CAPITOL POLICE

Based on recommendations in the bill for police personnel on both the House and Senate rolls a total of $20,057,339 and 1,186 positions will be available for police services throughout the Capitol buildings and grounds during the next fiscal year. This amount excludes overtime which is now costing approximately $750,000 per year on the Senate side and $1,000,000 for officers on the House roll. Circumstances, of course, will dictate what the costs will be in the ensuing fiscal year. The Chief and the Capitol Police Board will be expected to do everything possible to reduce the amount of overtime. Financing of these services is carried in several separate accounts. The appropriation for the Senate roll, including overtime which is absorbed, is made to the Sergeant at Arms and Doorkeeper of the Senate. The House roll, including overtime, is paid from the appropriation "Salaries, officers and employees, Office of the Sergeant at Arms". General operating expenses of the force are financed through a separate joint item appropriation. A total of 34 police officers will be detailed to the Congress during 1979 on a reimbursable basis from the District of Columbia Metropolitan Police Department. This number has been reduced by 16 from the 50 on detail for a number of years. Funds for the cost of this reimbursement are provided under the heading "Capitol Police Board" within the category of Joint Items.

The Committee notes the improvement in the quality and professionalism of the Capitol police in recent years and commends those responsible. Obviously the force will improve even more so in future years and, in added recognition of the competence of the personnel, the Committee recommends that promotions to higher rank come, to the extent practicable, from within the ranks of the force rather than from outside sources.

The following shows the number of positions and costs of all police services to the Capitol buildings and grounds during fiscal year 1978 by appropriation item:

CAPITOL POLICE

Item	Positions	Amount
Salary expenses, Capitol Police on House payroll	629	$9,774,138
Salary expenses, Capitol Police on Senate payroll	523	8,112,101
Total salary expense for Capitol Police	1,152	17,886,239
General expenses		750,100
Reimbursement to Metropolitan Police Department for salaries of detailed personnel	34	1,421,000
Grand total, all police services	1,186	[1] 20,057,339

[1] Excludes overtime currently estimated to be approximately $1,750,000 per annum.

COMPUTER OPERATIONS

The Committee is encouraged by the monthly progress reports of the Senate Computer Operations and Programing activities that are being provided by the Sergeant at Arms of the Senate to the Committees on Appropriations and Rules and Administration. The Com-

mittee commends this effort of the Sergeant at Arms to keep the appropriate committees informed and recommends that this reporting system be maintained.

The Committee bas also included a fiscal year 1978 supplemental budget estimate in the amount of $1,219,000, which was requested to cover the cost of the October 1, 1977 Government-wide comparability pay increase for the Office of the Sergeant at Arms of the Senate.

The Committee has included the following provision in the bill to accomplish the various position increases, establish new positions, and abolish others in the Office of the Sergeant at Arms for fiscal year 1979:

OFFICE OF SERGEANT AT ARMS AND DOORKEEPER

Provided, That, effective October 1, 1978, the Sergeant at Arms and Doorkeeper may appoint and fix the compensation of an Auditor at not to exceed $15,752 per annum; two Teletype Operators at not to exceed $12,530 per annum each; two Assistant Cabinetmakers at not to exceed $15,573 per annum each; six Parking Attendants at not to exceed $4,475 per annum each; a Secretary at not to exceed $15,036 per annum; a Layout Technician at not to exceed $13,962 per annum; a Manager, Computer Operations at not to exceed $34,368 per annum in lieu of an Operations Manager at not to exceed $31,862 per annum; a Manager, Planning, Budget and Administration at not to exceed $34,368 per annum in lieu of a Systems Supervisor at not to exceed $34,368 per annum; a Manager, Data Network at not to exceed $34,368 per annum in lieu of a Network Supervisor at not to exceed $34,368 per annum; a Manager, Systems Programming at not to exceed $34,368 per annum in lieu of a Senior Programmer Supervisor at not to exceed $34,368 per annum; a Manager, Administrative Applications Development at not to exceed $34,368 per annum in lieu of a Senior Programmer Supervisor at not to exceed $34,368 per annum; a Manager, Legislative Applications Development at not to exceed $34,368 per annum in lieu of a Systems Supervisor at not to exceed $34,368 per annum; a Manager, User Training and Liaison at not to exceed $34,368 per annum in lieu of a Systems Supervisor at not to exceed $34,368 per annum; an Office Manager at not to exceed $20,048 per annum in lieu of an Office Supervisor at not to exceed $19,332 per annum; two Senior Applications Analysts at not to exceed $32,220 per annum each in lieu of two Senior Computer Specialists at not to exceed $31,146 per annum each; two Senior Applications Analysts at not to exceed $31,146 per annum each in lieu of two Senior Programmer Analysts at not to exceed $28,819 per annum each; four Senior Computer Specialists at not to exceed $31,146 per annum each in lieu of four Senior Programmer Analysts at not to exceed $28,819 per annum each; a Senior Computer Specialist at not to exceed $32,220 per annum in lieu of a Lead Analyst at not to exceed $29,535 per annum; two Applications Analysts at not to exceed $28,819 per annum each in lieu of a Senior Programmer

Analyst at not to exceed $28,819 per annum; four Computer Specialists at not to exceed $28,819 per annum each in lieu of two Programmer Analysts at not to exceed $26,492 per annum each and a Programmer Analyst at not to exceed $26,134 per annum; ten Senior Programmer Analysts at not to exceed $26,492 per annum each in lieu of two Systems Programmers at not to exceed $26,492 per annum each, a Programmer Analyst at not to exceed $26,492 per annum, a Systems Analyst at not to exceed $26,492 per annum and a Computer Specialist at not to exceed $24,344 per annum; thirteen Senior Programmer Analysts at not to exceed $24,344 per annum each in lieu of seven Programmer Analysts at not to exceed $26,492 per annum each, a Systems Analyst at not to exceed $26,492 per annum, a Systems Programmer at not to exceed $26,492 per annum, two Computer Specialists at not to exceed $24,344 per annum each, a Computer Specialist at not to exceed $23,270 per annum and a Programmer Analyst at not to exceed $21,838 per annum; six Programmer Analysts at not to exceed $21,838 per annum each in lieu of a Programmer Analyst at not to exceed $26,492 per annum, a Computer Specialist at not to exceed $24,344 per annum and a Computer Specialist at not to exceed $23,270 per annum; four Programmer Analysts at not to exceed $18,974 per annum each in lieu of a Programmer Analyst at not to exceed $26,492 per annum and two Program Analysts at not to exceed $21,838 per annum each; a Text Processing Specialist at not to exceed $19,332 per annum in lieu of an Office Systems Specialist at not to exceed $17,542 per annum; two Text Processing Specialists at not to exceed $17,542 per annum each in lieu of an Office Systems Specialist at not to exceed $17,542 per annum and a Liaison and Documentation Specialist at not to exceed $17,542 per annum; three Senior Systems Programmers at not to exceed $28,819 per annum each in lieu of three Senior Programmer Analysts at not to exceed $28,819 per annum each; a Junior Systems Programmer at not to exceed $23,270 per annum in lieu of a Computer Specialist at not to exceed $23,270 per annum; a Data Base Systems Programmer at not to exceed $26,492 per annum in lieu of a Systems Analyst at not to exceed $26,492 per annum; a Network Technical Control Supervisor at not to exceed $32,220 per annum in lieu of a Senior Computer Specialist at not to exceed $31,146 per annum; a Communications Software Specialist at not to exceed $32,220 per annum in lieu of a Senior Computer Specialist at not to exceed $31,146 per annum; a Communications System Specialist at not to exceed $29,535 per annum in lieu of a Programmer Analyst at not to exceed $26,492 per annum; a Communications Software Programmer Analyst at not to exceed $26,492 per annum in lieu of a Systems Programmer at not to exceed $26,492 per annum; a Network Equipment Supervisor at not to exceed $26,492 per annum in lieu of a Systems Analyst at not to exceed $26,492 per annum; two Network Technicians at not to exceed $19,153 per annum each in lieu of not to exceed $23,270 per annum each; two Junior Network Technicians at

not to exceed $15,215 per annum each in lieu of two Computer Terminal Installers at not to exceed $10,382 per annum each; three Computer Terminal Installers at not to exceed $12,888 per annum each in lieu of a Keypunch Operator at not to exceed $12,351 per annum, a Data Conversion Operator at not to exceed $11,277 per annum and a Computer Terminal Installer at not to exceed $10,382 per annum; an Office Systems Supervisor at not to exceed $28,819 per annum in lieu of a Training Specialist at not to exceed $26,492 per annum; a Technical Training Specialist at not to exceed $26,492 per annum in lieu of a Systems Programmer at not to exceed $26,492 per annum; an Office Systems Training Supervisor at not to exceed $26,492 per annum in lieu of a Training Specialist at not to exceed $26,492 per annum; seven Senior Office Systems Specialists at not to exceed $22,912 per annum each in lieu of two Training Specialists at not to exceed $22,912 per annum each and three Office Systems Specialists at not to exceed $17,542 per annum each; eight Office Systems Specialists at not to exceed $18,258 per annum each in lieu of a Training Specialist at not to exceed $22,912 per annum, four Office Systems Specialists at not to exceed $17,542 per annum each and a Printing Operator at not to exceed $16,826 per annum; nine Office Systems Specialists at not to exceed $16,647 per annum each in lieu of five Office Systems Specialists at not to exceed $17,542 per annum each, two Printing Operators at not to exceed $16,826 per annum each and a Quality Controller at not to exceed $16,826 per annum; two Office Systems Specialists at not to exceed $15,036 per annum each in lieu of an Office Systems Specialist at not to exceed $17,542 per annum; a Senior Training Specialist at not to exceed $22,912 per annum in lieu of a Training Specialist at not to exceed $22,912 per annum; three Training Specialists at not to exceed $18,258 per annum each in lieu of three Office Systems Specialists at not to exceed $17,542 per annum each; four Training Specialists at not to exceed $16,647 per annum each in lieu of an Office Systems Specialist at not to exceed $17,542 per annum and two Printing Operators at not to exceed $16,826 per annum each; a Production Manager at not to exceed $25,060 per annum in lieu of not to exceed $23,986 per annum; a Hardware Manager at not to exceed $25,060 per annum in lieu of an Operations Supervisor at not to exceed $23,986 per annum; two Computer Resource and Performance Analysts at not to exceed $22,912 per annum each in lieu of two Data Standards Specialists at not to exceed $22,912 per annum each; a Documentation Specialist at not to exceed $22,017 per annum in lieu of a Computer Performance Analyst at not to exceed $22,017 per annum; six Job Controllers at not to exceed $16,826 per annum each in lieu of six Lead Operators at not to exceed $16,468 per annum each; six Lead Operators at not to exceed $16,110 per annum each in lieu of not to exceed $16,468 per annum each; a Data Conversion Operator at not to exceed $11,277 per annum in lieu of a Computer Terminal Installer at not to exceed $10,382 per annum; a Secretary at

not to exceed $21,122 per annum in lieu of a Technical Writer at not to exceed $21,122 per annum; a Secretary at not to exceed $14,857 per annum in lieu of a Secretary Typist at not to exceed $13,962 per annum; a Secretary at not to exceed $14,141 per annum in lieu of a Junior Operator at not to exceed $14,678 per annum; three Secretaries at not to exceed $13,962 per annum each in lieu of a Secretary Receptionist at not to exceed $13,962 per annum, a Secretary Typist at not to exceed $13,962 per annum and a Secretary at not to exceed $12,888 per annum; a Secretary/Receptionist at not to exceed $13,604 per annum in lieu of a Quality Controller at not to exceed $16,826 per annum; a Secretary Typist at not to exceed $13,067 per annum in lieu of a Quality Controller at not to exceed $16,826 per annum; a Receptionist at not to exceed $12,172 per annum in lieu of an Operations Clerk at not to exceed $13,246 per annum; an Office Systems Supervisor at not to exceed $26,492 per annum; a Text Processing Specialist at not to exceed $14,678 per annum; two Senior Systems Programmers at not to exceed $31,146 per annum each; a Data Resources Manager at not to exceed $25,060 per annum; a Secretary at not to exceed $14,320 per annum; two Senior Network Technicians at not to exceed $26,492 per annum each; a Technical User Liaison at not to exceed $16,468 per annum; a Special Projects Officer at not to exceed $32,220 per annum; a Receptionist at not to exceed $13,246 per annum; two Captains, Police Force at not to exceed $25,776 per annum each; two Sergeants, Police Force at not to exceed $17,900 per annum each; three Detectives, Police Force at not to exceed $16,826 per annum each; two Plainclothes Officers, Police Force at not to exceed $15,752 per annum each; a Clerk at not to exceed $13,962 per annum in lieu of not to exceed $12,888 per annum; a Clerk at not to exceed $12,888 per annum in lieu of not to exceed $11,814 per annum; an Auditor at not to exceed $12,888 per annum in lieu of not to exceed $11,814 per annum; a Purchasing Clerk at not to exceed $15,036 per annum in lieu of not to exceed $13,962 per annum; a Clerk at not to exceed $12,530 per annum in lieu of not to exceed $11,456 per annum; a Supervisor of Door Attendants at not to exceed $19,153 per annum in lieu of a Messenger Acting as Assistant Doorkeeper at not to exceed $15,752 per annum; an Assistant Supervisor of Door Attendants at not to exceed $17,184 per annum in lieu of a Messenger Acting as Assistant Doorkeeper at not to exceed $15,036 per annum; a Director, Service Department at not to exceed $41,170 per annum in lieu of a Superintendent, Service Department at not to exceed $41,170 per annum; an Assistant Director, Service Department at not to exceed $28,640 per annum in lieu of an Assistant Superintendent, Service Department at not to exceed $25,776 per annum; a Technical Clerk at not to exceed $13,962 per annum in lieu of a Photostat Operator at not to exceed $13,962 per annum; a Secretary to the Director, Service Department at not to exceed $16,468 per annum in lieu of a Secretary to Superintendent, Service Department at not to exceed $16,468 per annum; ten Insert-

ing Machine Operators at not to exceed $12,888 per annum each, in lieu of not to exceed $11,814 per annum each; three Senior Press Operators at not to exceed $17,542 per annum each, in lieu of three Printing Press Operators at not to exceed $16,468 per annum each; eleven Printing Press Operators at not to exceed $16,468 per annum each, in lieu of eleven Offset Press Operators at not to exceed $15,394 per annum each; a Senior Pressman/Repairman at not to exceed $17,900 per annum in lieu of not to exceed $17,363 per annum; an Assistant Night Supervisor, Duplicating Section at not to exceed $18,079 per annum in lieu of not to exceed $17,363 per annum; eleven Addressograph Operators at not to exceed $13,425 per annum each, in lieu of not to exceed $12,530 per annum each; a Secretary at not to exceed $13,425 per annum in lieu of not to exceed $12,530 per annum; a Secretary-Receptionist at not to exceed $14,857 per annum in lieu of not to exceed $13,962 per annum; a Supervisor, Supply Section at not to exceed $16,289 per annum in lieu of not to exceed $15,394 per annum; a Technical Clerk at not to exceed $13,425 per annum in lieu of not to exceed $12,530 per annum; six Automatic Typewriter Repairmen at not to exceed $17,542 per annum each, in lieu of not to exceed $16,468 per annum each; three Repairmen at not to exceed $16,110 per annum each, in lieu of not to exceed $15,036 per annum each; a Film and Video Cameraman at not to exceed $25,597 per annum in lieu of not to exceed $23,270 per annum; a Laboratory Supervisor at not to exceed $25,597 per annum in lieu of not to exceed $23,270 per annum; an Audio Engineer at not to exceed $21,122 per annum in lieu of not to exceed $19,332 per annum; an Audio Engineer at not to exceed $16,468 per annum in lieu of not to exceed $15,036 per annum; a Skilled Laborer at not to exceed $12,888 per annum in lieu of not to exceed $11,814 per annum; a Skilled Laborer at not to exceed $12,530 per annum in lieu of not to exceed $11,456 per annum; a Laborer at not to exceed $12,888 per annum in lieu of not to exceed $11,814 per annum; two Senior Door Attendants at not to exceed $15,036 per annum each, in lieu of two Messengers Acting as Assistant Doorkeeper at not to exceed $15,036 per annum each; twenty-five Door Attendants at not to exceed $12,530 per annum each, in lieu of twenty-five Messengers at not to exceed $12,530 per annum each; six Door Attendants at not to exceed $11,814 per annum each, in lieu of six Messengers at not to exceed $11,814 per annum each; a Door Attendant at not to exceed $10,740 per annum in lieu of a Messenger at not to exceed $10,740 per annum; a Door Attendant at not to exceed $10,382 per annum in lieu of a Messenger at not to exceed $10,382 per annum; a Chief Door Attendant for the Minority at not to exceed $13,962 per annum in lieu of a Chief Messenger for the Minority at not to exceed $13,962 per annum; three Door Attendants for the Minority at not to exceed $12,530 per annum each, in lieu of three Messengers for the Minority at not to exceed $12,530 per annum each; a Secretary/Receptionist at not to exceed $15,394 per annum in lieu of a Receptionist at not to exceed

$13,067 per annum: *Provided further*, That, effective April 1, 1978, the Sergeant at Arms and Doorkeeper may appoint and fix the compensation of an Executive Assistant at not to exceed $42,065 per annum in lieu of a Special Assistant at not to exceed $30,788 per annum.

OFFICES OF THE SECRETARIES FOR THE MAJORITY AND MINORITY

1978 appropriation	$411,000
1979 budget estimate	411,000
House allowance	
Committee recommendation	411,000

The Committee recommends an appropriation of $411,000 which is the same as the 1978 appropriation and the budget estimate.

This appropriation contains funds for the salaries of personnel under the jurisdiction of the Secretary for the Majority and the Secretary for the Minority. The fiscal year allowance for each Secretary is $153,500. The allowance does not include the compensation of the Secretary for the Majority and the Secretary for the Minority inasmuch as the occupants of the positions are elected officers of the Senate and the annual compensation is a fixed statutory rate.

The Committee has also included a fiscal year 1978 supplemental budget estimate in the amount $20,700, which was requested to cover the cost of the October 1, 1977, Government-wide comparability pay increase.

AGENCY CONTRIBUTIONS AND LONGEVITY COMPENSATION

1978 appropriation	$7,285,000
1979 budget estimate	7,785,000
House allowance	
Committee recommendation	7,785,000

The Committee recommends an appropriation of $7,785,000, which is an increase of $500,000 over the 1978 appropriation and the same as the budget estimate.

This appropriation contains funds for agency contributions for Civil Service Retirement, Federal Employees' Group Life Insurance, Federal Employees' Health Benefits and for longevity compensation and encompasses all positions under the heading "Salaries, Officers and Employees." The increase over fiscal year 1978 is to provide full year funding for the modification of the longevity program. The supplemental budget request of $250,000 to provide initial funding for the longevity compensation program has been denied. The Committee believes that whatever funds are required for the program for the remainder of fiscal year 1978 can be absorbed.

The Committee has also included a fiscal year 1978 supplemental budget estimate in the amount of $785,000, which was requested to cover the cost of the October 1, 1977, Government-wide comparability pay increase.

OFFICE OF THE LEGISLATIVE COUNSEL OF THE SENATE

1978 appropriation	$793,000
1979 budget estimate	815,000
House allowance	
Committee recommendation	815,000

The Committee recommends an appropriation of $815,000, which is an increase of $22,000 over the 1978 appropriation and the same as the budget estimate.

The appropriation includes funds for salaries, agency contributions and expenses for the Office of the Legislative Counsel. The increase over fiscal year 1978 is required to cover increased agency contributions and office expenses.

An amount of $33,300 is included in the bill for the remainder of fiscal year 1978 for this appropriation item, the same amount as the budget request. These funds are required to cover the cost of the October 1, 1977 Government-wide comparability pay increase.

Contingent Expenses of the Senate

SENATE POLICY COMMITTEES

1978 appropriation	$1,272,000
1979 budget estimate	1,388,000
House allowance	
Committee recommendation	1,388,000

The Committee recommends an appropriation of $1,388,000, which is an increase of $116,000 over the 1978 appropriation and the same as the budget estimate.

This appropriation includes funds for salaries, agency contributions and expenses of the Majority Policy Committee and the Minority Policy Committee. The amount in the bill will provide an allowance for each Committee for fiscal year 1979 of $694,000. The approximate 10 percent increase over fiscal year 1978 is for salary adjustments, agency contributions and increased operating expenses.

An amount of $93,500 is included in the bill for the remainder of fiscal year 1978 for this appropriation item, the same as the budget request. These funds are required to cover the cost of the October 1, 1977 Government-wide comparability pay increase.

AUTOMOBILES AND MAINTENANCE

1978 appropriation	$50,000
1979 budget estimate	60,000
House allowance	
Committee recommendation	58,000

The Committee recommends an appropriation of $58,000 which is an increase of $8,000 over the 1978 appropriation and $2,000 below the budget estimate.

The appropriation includes funds to provide for the purchase, lease and maintenance for twenty vehicles for official use of officers and offices of the Senate. Thirteen vehicles are leased and seven are owned outright by the Senate. Drivers are provided for five of the vehicles and the positions are appropriated for in the funds under the jurisdiction of the Sergeant at Arms and Doorkeeper.

INQUIRIES AND INVESTIGATIONS

1978 appropriation	$29,995,000
1979 budget estimate	30,625,000
House allowance	
Committee recommendation	30,625,000

The committee recommends an appropriation of $30,625,000 which is an increase of $630,000 over the anticipated 1978 appropriation and the same as the budget estimate.

This appropriation includes funds for inquiries and investigations authorized by Senate resolutions for all standing committees, special committees, and select committees. The appropriation contains $740,881 for the Investigations Division of the Committee on Appropriations in the discharge of its functions as provided for by Senate Resolution 193, agreed to October 14, 1943. This appropriation also funds the Select Committee on Ethics, of which there is no limitation, under authority of Senate Resolution 338, agreed to July 24, 1964, as amended.

An amount of $1,553,800 is included in the bill for the remainder of fiscal year 1978 to cover the costs associated with the October 1, 1977, Government-wide pay increase, for this appropriation item, the same amount as the budget request.

FOLDING DOCUMENTS

1978 appropriation	$103,000
1979 budget estimate	103,000
House allowance	
Committee recommendation	103,000

The Committee recommends an appropriation of $103,000, which is the same level as the 1978 appropriation and the budget estimate.

This appropriation includes funds for the employment of personnel at an hourly rate of pay by the Sergeant at Arms and Doorkeeper. Personnel appointed under this authority are assigned to the Service Department and other departments as needed.

The Committee has also included a fiscal year 1978 supplemental budget estimate in the amount of $7,600, which was requested to cover the cost of the October 1, 1977, Government-wide comparability pay increase.

MISCELLANEOUS ITEMS

1978 appropriation	$25,492,000
1979 budget estimate	29,443,000
House allowance	
Committee recommendation	29,443,000

The Committee recommends an appropriation of $29,443,000, which is an increase of $3,951,000 over the 1978 appropriation and the same as the budget estimate.

This appropriation includes funds for general expenses of the Senate and is generally referred to as the housekeeping appropriation for the Senate. The major items included in this appropriation are the Senatorial Official Office Expense Accounts, telephone and telegraph service, mechanical equipment and repair, commercial rent and GSA reimbursement for Senatorial offices located in Federal buildings in the home States, and computer equipment including the Correspondence Management System (CMS).

The Committee has reduced the amount budgeted for the annual deficit of the Senate Restaurant from $497,000 in fiscal year 1976 to $250,000 in fiscal year 1977 to zero—nothing in fiscal year 1978. The Committee commends the new management team on their fine performance. The Committee strongly believes the restaurants should be

self-supporting and has therefore again provided no subsidy for fiscal year 1979 for the Senate Restaurant.

The Committee has also continued the practice of funding payments to the Civil Service Retirement Fund associated with reemployed annuitants out of this appropriation.

The following table shows the apportionment of funds under the "miscellaneous items" appropriation account.

MISCELLANEOUS ITEMS APPORTIONMENT SCHEDULE

Item	Fiscal year 1978	Fiscal year 1979	Difference
Resolution and reorganization reserve	$208,828	$223,929	+$15,101
Miscellaneous items (reserve for contingencies)	275,123	275,448	+325
Employees compensation fund reimbursement	27,983	40,135	+12,152
Civil service retirement fund, reemployed annuitants	500,000	500,000	0
Commission on Art and Antiquities (S. Res. 382, 90th Cong.)	17,500	17,500	0
Committee on Rules and Administration, calendars (S. Res. 103, 95th Cong.)	52,000	52,000	0
Senators' official office expense accounts (Public Law 92-607)	5,490,000	5,490,000	0
Reception of foreign dignitaries	0	25,000	+25,000
Foreign travel, members and employees	750,000	750,000	0
Secretary of the Senate:			
Library	58,000	71,000	+13,000
Historical office	10,600	5,600	−5,000
Document room, study of facilities	3,000	0	−3,000
Stationery room, automated accounting and inventory systems	100,000	0	−100,000
Travel (Public Law 94-59)	5,500	6,300	+800
Emergency reporting (Public Law 89-90)	10,000	10,000	0
Federal Election Act (Public Law 92-342)	25,000	25,000	0
Office of Classified National Security Information: Maintenance contract for alarm system	0	2,711	+2,711
Consultants (not more than 2) (Public Law 95-26)	0	51,000	+51,000
Legal reference volumes (Senators' offices) (Public Law 92-51)	0	35,000	+35,000
Contractual legal services	0	75,000	+75,000
Sergeant at Arms and Doorkeeper:			
State offices	2,803,200	3,599,947	+796,747
Telegraph services, committees and official telegrams	22,300	24,530	+2,230
Travel (Public Law 94-303)	25,000	25,000	0
Furniture	125,000	125,000	0
Contingencies	30,500	35,500	+5,000
Cabinet shop	27,400	31,510	+4,110
Custodial services	55,386	63,244	+7,858
Barber shops	200	0	−200
Telecommunications department	3,880,205	4,341,357	+461,152
Service department	2,741,487	3,816,989	+1,075,502
Computer center	4,046,900	5,752,300	+1,705,400
Correspondence management system	3,185,388	3,972,000	+786,612
Total	24,476,500	29,443,000	+4,966,500
Less: Amount of reduction in 1978 appropriation under budget estimate to be covered by 1977 carryover balance	−3,000,000	0	+3,000,000
Anticipated fiscal year 1978 pay raise supplemental pay comparability, Oct. 1, 1977	+15,500	0	−15,500
Program supplemental	+4,000,000	0	−4,000,000
Total appropriation	25,492,000	29,443,000	+3,951,000

An amount of $4,015,500 is included in the bill for the remainder of fiscal year 1978 for Miscellaneous Items, which is the same amount as the budget request.

The Committee recommends that the Committee on Rules and Administration, working closely with the Secretary of the Senate and the Sergeant at Arms and Doorkeeper of the Senate, continue with the experiment to transmit to Senate offices, amendment information and related Senate proceedings as those actions or events occur on the Senate floor. The Committee believes that such an experiment could employ existing facilities and staff to provide timely and useful information to the Members and their staffs.

POSTAGE STAMPS

1978 appropriation	$25,200
1979 budget estimate	6,000
House allowance	
Committee recommendation	6,000

The Committee recommends an appropriation of $6,000, which is a decrease of $19,200 below the 1978 appropriation and the same as the budget estimate.

This appropriation includes funds for (1) first class, air mail and special delivery postage for the Secretary for the Majority, the Secretary for the Minority and the Chaplain, and (2) funds for air mail and special delivery postage for the Office of the Secretary, Office of the Sergeant at Arms and Doorkeeper and the President of the Senate.

STATIONERY (REVOLVING FUND)

1978 appropriation	$37,300
1979 budget estimate	39,000
House allowance	
Committee recommendation	39,000

The Committee recommends an appropriation of $39,000 which is an increase of $1,700 over the 1978 appropriation and the same as the budget estimate.

This appropriation includes funds for stationery and office supplies for the President of the Senate, Standing and Conference Committees of the Senate, Office of the Secretary of the Senate, Office of the Sergeant at Arms, Office of the Chaplain, and the Senate Chamber. The changes from fiscal year 1978 are as follows: an increase of $500 for the Sergeant at Arms; an increase of $1,050 for the Secretary of the Senate; and an allocation of $150 for contingencies.

Stationery (revolving fund) allocation—fiscal year 1979

President of the Senate	$4,500
Committees and Officers of the Senate:	
Appropriations Committee	600
15 Standing Committees at $300 each	4,500
2 Conference Committees at $300 each	600
Subtotal	5,700
Secretary of the Senate:	
Secretary's Office	4,000
Document Room	1,100
Daily Digest	150
Enrolling Clerk	500
Disbursing Office	2,000
Historical Office	300
Library	2,750
Office of Classified National Security Information	500
Office of Public Records	6,000
Official Reporters	800
Stationery Room	350
Subtotal	18,450

Sergeant at Arms and Doorkeeper:	
Periodical Press Gallery	125
Photographers Press Gallery	125
Post Office	500
Press Gallery	500
Radio Press Gallery	250
Computer/Micrographics Centers	1,500
Sergeant at Arms' Office	4,500
Subtotal	7,500
Chaplain	250
Senate Chamber	2,450
Miscellaneous Undistributed Contingency	150
Total	39,000

ADMINISTRATIVE PROVISIONS

The Committee has included a number of administrative provisions of a technical or housekeeping nature. As is customary, the administrative provisions are printed in the report together with a short explanatory statement.

EXTENDED AVAILABILITY

SEC. 101. Any funds appropriated under the heading "Senate" in any appropriation Act for the fiscal year ending September 30, 1978, and any funds made available for obligation through September 30, 1978, by section 109 of the Supplemental Appropriations Act, 1977, shall remain available for obligation through September 30, 1979, for the same purposes for which appropriated or made available.

This provision would extend the availability of any surplus funds remaining at the close of fiscal year 1978.

SENIOR LEGISLATIVE COUNSEL

SEC. 102. Effective October 1, 1978, the number of employees in the Office of the Legislative Counsel of the Senate who may be designated as, and receive the compensation of, a Senior Counsel is increased to five.

This administrative provision would increase from four to five the number of employees in the Office of the Legislative Counsel who may be designated as a Senior Counsel.

POSITIONS IN THE OFFICE OF THE SECRETARY OF THE SENATE

SEC. 103. Effective on the first day of the first month following the date of the enactment of this Act, the Secretary of the Senate may appoint and fix the compensation of two Senior Assistants, Document Room at not to exceed $14,678 per annum each in lieu of two Assistants in Document Room

at not to exceed $14,678 per annum each; a Senior Assistant, Document Room at not to exceed $14,678 per annum in lieu of an Assistant at not to exceed $13,246 per annum; a Senior Assistant, Document Room at not to exceed $14,678 per annum in lieu of an Assistant at not to exceed $12,530 per annum; two Senior Assistants, Document Room at not to exceed $14,678 per annum each in lieu of two Assistants at not to exceed $12,172 per annum each; an Assistant, Document Room at not to exceed $12,530 per annum in lieu of a Reference Assistant at not to exceed $14,678 per annum; three Assistants, Document Room at not to exceed $12,530 per annum each in lieu of three Assistants in Document Room at not to exceed $14,678 per annum each; a Chief Messenger, Library at not to exceed $13,962 per annum in lieu of a Chief Messenger in Library at not to exceed $13,246 per annum; a Messenger, Library at not to exceed $13,246 per annum in lieu of a Messenger at not to exceed $13,962 per annum; and three Counter Clerks, Stationery Room at not to exceed $14,678 per annum each in lieu of three Clerks at not to exceed $14,678 per annum each: Provided, That an employee serving as an Assistant in Document Room at not to exceed $14,678 per annum on the last day of the month in which this Act is enacted and who continues to serve as an Assistant, Document Room, after such last day may be paid compensation at not to exceed $14,678 per annum so long as such employee continuously serves in such position.

This administrative provision would adjust the titles and levels of compensation of positions under the supervision of the Secretary of the Senate. The changes in titles are designed to more clearly reflect the responsibilities of the employees. The changes in compensation include increases and offsetting decreases so that there is no overall increase in cost.

CLERK-HIRE ALLOWANCES

SEC. 104. (a) Effective April 1, 1978, the clerk-hire allowance of each Senator from the State of Georgia is increased to that allowed Senators from States having a population of five million but less than seven million, the population of said State having exceeded five million inhabitants.

(b) Effective April 1, 1978, the table contained in section 105(d)(1) of the Legislative Branch Appropriation Act, 1968, as amended and modified (2 U.S.C. 61–1(d)(1)), is amended by striking out

"$644,937 if such population is 7,000,000 but less than 9,000,000;"

and inserting in lieu thereof

"$644,937 if such population is 7,000,000 but less than 8,000,000;

"$664,627 if such population is 8,000,000 but less than 9,000,000;".

Part (a) of this administrative provision adjusts the clerk-hire allowance for the Senators from Georgia, the population of that state having exceeded five million inhabitants. Part (b) of this administrative provision splits the "7,000,000 to 9,000,000" population category into two categories.

ENACTMENT OF SENATE RESOLUTION 252 INTO LAW

SEC. 105. (a) For the period beginning on October 1, 1978, and ending on December 31, 1980, there is established within the Office of the Secretary of the Senate an office to be known as the "Office of Classified National Security Information" (hereafter in this section referred to as the "Office"). The Office shall be under the policy direction of the Majority Leader, the Minority Leader, and the chairman of the committee on Rules and Administration of the Senate, and shall be under the administrative direction and supervision of the Secretary of the Senate. The Office shall have the responsibility for safeguarding such restricted data and such other classified information as any committee of the Senate may from time to time assign to it.

(b) The Office shall have authority—

(1) upon application of any committee of the Senate, to perform the administrative functions necessary to classify and declassify information relating to the national security considerations of nuclear technology in accordance with guidelines developed for restricted data by the responsible executive agencies;

(2) to provide appropriate facilities for hearings of committees of the Senate at which restricted data or other classified information is to be presented or discussed; and

(3) to establish and operate a central repository in the United States Capitol for the safeguarding of restricted data and other classified information for which such Office is responsible.

(c) All records, documents, and data in the custody of the Office of Classified National Security Information established by section 2 of Senate Resolution Numbered 252, Ninety-fifth Congress, are transferred to the Office established by subsection (a).

(d) As an exercise of the rulemaking power of the Senate, section 2 of Senate Resolution Numbered 252, Ninety-fifth Congress, is repealed effective October 1, 1978.

This amendment enacts into law the provisions of section 2 of Senate Resolution 252 which establishes an Office of Classified National Security Information.

TRAVEL ALLOWANCE, SERGEANT AT ARMS AND DOORKEEPER

SEC. 106. Section 117 of the Second Supplemental Appropriations Act, 1978 (2 U.S.C. 61f–1a), is amended by striking out "$10,000" and inserting in lieu thereof "$25,000".

This administrative provision increases a travel allowance available to the Office of the Sergeant at Arms and Doorkeeper for certain travel expenses incurred by that office, primarily for transportation and per diem expenses associated with training and updating the skills of Computer Center and Service Department personnel.

CIVIL SERVICE RETIREMENT AND DISABILITY FUND

SEC. 107. During the fiscal year ending September 30, 1979, amounts required to be deposited in the Treasury of the United States to the credit of the Civil Service Retirement and Disability Fund under section 8344 of title 5, United States Code, with respect to any officer or employee of the Senate (including an employee in the office of a Senator) shall be paid from the contingent fund of the Senate. Effective October 1, 1979, amounts required to be so deposited with respect to any individual who is an officer or employee of the Senate (including an employee in the office of a Senator) on September 30, 1979, shall be paid from the contingent fund of the Senate so long as the individual serves continuously as an officer or employee of the Senate.

This administrative provision is identical to the provision that was included in the Legislative Branch Appropriation Acts, 1977 and 1978 and authorizes payments due the Civil Service Retirement and Disability Fund under authority of 5 U.S.C. 8344 to be paid from the Contingent Fund of the Senate during fiscal year 1979. The amount required to be paid to the Civil Service Retirement and Disability Fund is the value of the annuity during any period of reemployment of an annuitant by an agency of the Federal Government. The provision also stipulates that after fiscal year 1979, the provision shall apply only to employees of the Senate on board continuously from September 30, 1979, thus "grandfathering in" such employees.

EXPENSES OF NOMINATING PANELS

SEC. 108(a). Section 506 of the Supplemental Appropriation Act, 1973 (2 U.S.C. 58), is amended by redesignating subsections (h) through (j) as subsections (i) through (k), respectively, and by inserting after subsection (g) the following new subsection:

"(h)(1) For purposes of subsections (a) and (e), an individual who is selected by a Senator to serve on a panel or other body to make recommendations for nominees to one or more Federal judgeships or to one or more service academies shall be considered to be an employee in the office of that Senator with respect to travel and official expenses incurred in performing duties as a member of such panel or other body, and shall be reimbursed (A) for actual transportation expenses and per diem expenses (but not exceeding actual travel expenses) incurred while traveling in performing such duties within the Senator's home State or between that State and Washington, District of Columbia, and (B) for official expenses incurred in performing such duties. For purposes of this subsection and subsection (a), 'official expenses' means expenses of the type for which reimbursement may be made under subsection (a)(9) when such expenses are incurred by or on behalf of a Senator, and, for accounting purposes, such expenses shall be treated as expenses for which reimbursement may be made under subsection (a)(5).

"(2) The amount of official expenses incurred by individuals selected by a Senator for which reimbursement may be made under this subsection shall not exceed $500 each calendar year, and the total amount of expenses incurred by such individuals for which reimbursement may be made under this subsection shall not exceed $3,000 each calendar year.".

(b) The amendment made by subsection (a) shall take effect on January 1, 1978.

This administrative provision allows up to $3,000 of a Senator's Official Office Expense Account to be used for travel and other official expenses of persons selected by a Senator to serve on a panel to make recommendations for nominees to Federal judgeships or to service academies.

MERIT INCREASE PROGRAM

SEC. 109. (a) Effective with the fiscal year beginning October 1, 1978, and each fiscal year thereafter, the appropriations for "Office of the Secretary" and "Office of Sergeant at Arms and Doorkeeper" under the heading "Salaries, Officers and Employees" shall be available for the payment of additional annual compensation (hereinafter referred to as 'merit compensation") to employees rated as outstanding and exceptional by the Secretary of the Senate and Sergeant at Arms and Doorkeeper, respectively.

(b) Subject to the provisions of subsections (c) and (d), each fiscal year, the Secretary of the Senate may authorize merit compensation for not to exceed 8 employees of his Office and the Sergeant at Arms and Doorkeeper may authorize merit compensation for not to exceed 18 employees of his Office. Each such authorization shall continue in effect until it is terminated or changed by the Secretary of the Senate or the Sergeant at Arms and Doorkeeper, as the case may be.

(c) No employee shall be eligible to receive merit compensation unless such employee has occupied the same position for at least two years and is being compensated at the maximum annual salary for the position so occupied, except that, in the discretion of the Secretary of the Senate or the Sergeant at Arms and Doorkeeper, as the case may be, an employee who is receiving merit compensation and is transferred to another position in which he is compensated at the maximum annual salary shall be eligible to receive merit compensation while occupying such other position.

(d)(1) The amount of merit compensation which may be paid to an employee (as authorized by the Secretary of the Senate or the Sergeant at Arms and Doorkeeper, as the case may be) shall not exceed an amount equal to ten percent of the maximum annual rate of compensation of the position occupied by such employee rounded to the next highest multiple contained in section 1(a) of the applicable Order of the President pro tempore of the Senate issued under authority of section 4 of the Federal Pay Comparability Act of 1970.

(2) The amount of merit compensation which may be paid to an employee, when added to his regular annual compensa-

tion and his longevity compensation, shall not exceed the maximum annual compensation which may be paid to Senate employees generally as prescribed by law or orders of the President pro tempore issued under authority of section 4 of the Federal Pay Comparability Act of 1970.

(e) Within thirty days following the end of each fiscal year, the Secretary of the Senate and the Sergeant at Arms and Doorkeeper shall file reports with the Senate Committee on Appropriations detailing the use and implementation of the authority contained in this section. Such reports shall include the names of all employees receiving merit compensation under authority of this section at the end of the fiscal year, the positions occupied by them, and the date when each such employee first began to receive merit compensation.

This administrative provision establishes a merit increase system in the Office of the Sergeant at Arms and Doorkeeper and the Office of the Secretary of the Senate. The intent is to minimize the numerous requests to the Committee for permanent changes in not-to-exceed rates. Under the provisions of the system, the Secretary may raise the pay of up to 8 personnel a year and the Sergeant at Arms may raise the pay of up to 18 personnel a year. Raises may not exceed 10 percent and are to be given only to employees rated as outstanding and exceptional. The Committee believes this is a more economical method of rewarding outstanding performance than the method employed in the past where the not-to-exceed salary rate for a particular position was permanently increased, and not decreased when the outstanding incumbent departed the position.

LONGEVITY PROGRAM

SEC. 110. (a) Subsections (a) and (b) of section 106 of the Legislative Branch Appropriations Act, 1963 (2 U.S.C. 60j), are amended to read as follows:

"SEC. 106. (a) This section shall apply to—

"(1) each employee of the Senate whose compensation is paid from the appropriation for Salaries, Officers and Employees under the following headings:

"(A) Office of the Secretary, including individuals employed under authority of section 244 of the Legislative Reorganization Act of 1946 (2 U.S.C. 74b);

"(B) Office of the Sergeant at Arms and Doorkeeper, except employees designated as 'special employees'; and

"(C) Offices of the Secretaries for the Majority and the Minority;

"(2) each employee of the Senate authorized by Senate resolution to be appointed by the Secretary of the Senate or the Sergeant at Arms and Doorkeeper, except employees designated as 'special employees'; and

"(3) each employee of the Capitol Guide Service established under section 441 of the Legislative Reorganization Act of 1970.

"(b)(1) Except as provided in paragraph (2), an employee to whom this section applies shall be paid, during any period of continuous creditable service, additional annual compen-

sation (hereinafter referred to as 'longevity compensation') at the rate of two times the multiple contained in section 1(a) of the applicable Order of the President pro tempore of the Senate issued under authority of section 4 of the Federal Pay Comparability Act of 1970 for (A) each year of creditable service performed for the first five years and (B) each two years of creditable service performed during the twenty-year period following the first five years.

"(2) The amount of longevity compensation which may be paid to an employee, when added to his regular annual compensation, shall not exceed the maximum annual compensation which may be paid to Senate employees generally as prescribed by law or orders of the President pro tempore issued under authority of section 4 of the Federal Pay Comparability Act of 1970.

"(3) For purposes of this section—

"(A) creditable service includes (i) service performed as an employee described in subsection (a), (ii) service performed as a member of the Capitol Police or as an employee of the United States Capitol Telephone Exchange while compensation therefor is disbursed by the clerk of the House of Representatives, and (iii) service which is creditable for purposes of this section as in effect on the last day of the month in which the Legislative Branch Appropriation Act, 1979, is enacted;

"(B) in computing length of continuous creditable service, only creditable service performed subsequent to August 31, 1957, shall be taken into account, except that, in the case of service as an employee employed under authority of section 244 of the Legislative Reorganization Act of 1946, only creditable service performed subsequent to January 2, 1971, shall be taken into account; and

"(C) continuity of creditable service shall not be deemed to be broken by separations from service of not more than thirty days, by the performance of service as an employee (other than an employee subject to the provisions of this section) whose compensation is disbursed by the Secretary of the Senate or the Clerk of the House of Representatives, or by the performance of active military service in the armed forces of the United States, but periods of such separations and service shall not be creditable service.

"(4) Longevity compensation shall be payable on and after the first day of the first month following completion of each period of creditable service upon which such compensation is based.".

(b) The amendment made by subsection (a) shall take effect on the first day of the first month which begins after the date of the enactment of this Act. The gross compensation of employees entitled to longevity compensation on such first day under section 106 of the Legislative Branch Appropriation Act, 1963, shall be adjusted in accordance with the provisions of such section as amended by subsection (a). No increase in compensation by reason of such amendment shall

take effect for any pay period beginning before such first day, and no monetary benefit by reason of such amendment shall accrue for any period before such first day.

Section 110 has been included by the Senate Committee and relates to longevity pay for persons in the employment of the Secretary of the Senate, the Sergeant at Arms and Doorkeeper of the Senate, including the Capitol Police Force. The text of the Administrative Provision is printed in full previously and following is a table excerpted from page 49 of volume 1 of the hearing record on 1979 Legislative Branch Appropriations which compares the existing program with the proposed program.

LONGEVITY PROGRAM

Years of service	Current program (increase at the end of each 5 years of service with a maximum of 4 increases)—20-year program.		Proposed program (increase at the end of each year for the 1st 5 years and at the end of every other year for the next 20 years)—25-year program	
At the beginning of year—	Annual increase	Aggregate increase	Annual increase	Aggregate increase
1				
2			358	358
3			358	716
4			358	1,074
5			358	1,432
6	1,074	1,074	358	1,790
7				1,790
8			358	2,148
9				2,148
10			358	2,506
11	1,074	2,148		2,506
12			358	2,864
13				2,864
14			358	3,222
15				3,222
16	1,074	3,222	358	3,580
17				3,580
18			358	3,938
19				3,938
20			358	4,296
21	1,074	4,296		4,296
22			358	4,654
23				4,654
24			358	5,012
25				5,012
26			358	5,370

CONTINGENT EXPENSES OF THE SENATE

JOINT ECONOMIC COMMITTEE

1978 appropriation	$1,697,100
1979 budget estimate	2,353,000
House allowance	2,353,000
Committee recommendation	2,353,000

The Committee recommends an appropriation of $2,353,000, which is an increase of $655,900 over the 1978 appropriation and the same as the budget estimate and the House allowance.

This appropriation includes funds for salaries, agency contributions and expenses for the Joint Economic Committee. This joint committee is mandated to make a continuing study of matters relating to the Economic Report of the President and to report the findings of these and other studies to the Senate and House of Representatives.

Of the amount recommended, $1,800,000 is for the recurring activities of the Joint Committee and represents no increase over the 1978 program level. The balance of the recommended amount, $553,000, represents funding of a temporary nature to conduct a special study on

economic change as required by H. Con. Res. 248 agreed to on July 18, 1977. The bill contains language that will extend the availability of funds for the study through December 31, 1980.

JOINT COMMITTEE ON PRINTING

1978 appropriation	$1,081,000
1979 budget estimate	656,000
House allowance	656,000
Committee recommendation	656,000

The Committee recommends an appropriation of $656,000, which is a decrease of $425,000 below the 1978 appropriation and the same as the budget estimate and the House allowance.

This appropriation includes funds for salaries, agency contributions and expenses of the Joint Committee on Printing. The recommendation is $425,000 less than the FY 1978 level due primarily to the fact that a non-recurring comprehensive review of the Government Printing Office was fully funded in FY 1978.

CONTINGENT EXPENSES OF THE HOUSE

JOINT COMMITTEE ON TAXATION

1978 appropriation	$1,948,100
1979 budget estimate	2,375,200
House allowance	2,375,200
Committee recommendation	2,375,200

The Committee recommends an appropriation of $2,375,200, which is an increase of $427,100 over the 1978 appropriation and the same as the budget estimate and the House allowance.

This joint committee provides technical assistance to the Finance Committee of the Senate and the House Ways and Means Committee. The committee's duties include the investigation of the operation and effects of the Federal system of taxation, the administration of such taxes, and measures and methods for the simplification of such taxes. The increase over 1978 is related to additional staff and increased computer costs required to provide the services requested by the tax legislation committees of both branches of Congress.

OFFICE OF THE ATTENDING PHYSICIAN

1978 appropriation	$344,200
1979 budget estimate	465,000
House allowance	465,000
Committee recommendation	465,000

The Committee recommends an appropriation of $465,000, which is an increase of $120,800 over the 1978 appropriation and the same as the budget estimate and the House allowance.

This appropriation supports outpatient care which is available to the Members. In addition, first aid rooms, located in the Capitol and each of the House and Senate Office buildings, are staffed by a registered nurse, and are available to staff for minor ailments and tourists on an emergency basis. The office also provides first-aid instruction to Doorkeepers and the Capitol Police and conducts various medical screening programs throughout the year. The amount recommended includes $253,475 to fully cover the medical supplies, equipment, expenses, allowances, and full reimbursement to the Navy Department for the seven uniformed personnel assigned to the Office. The

Committee is pleased to note that this Office has agreed to provide medical services to the Capitol Police force, including physical examinations to applicants for employment, which currently are given by the U.S. Public Health Service on a reimbursable basis.

Capitol Police

GENERAL EXPENSES

1978 appropriation	$724,800
1979 budget estimate	750,100
House allowance	750,100
Committee recommendation	750,100

The Committee recommends an appropriation of $750,100, which is an increase of $25,300 over the 1978 appropriation and the same as the budget estimate and the House allowance.

This appropriation provides for payment of expenses related to the U.S. Capitol Police and includes such items as office supplies, communications, maintenance, and repairs of police vehicles, training, and other miscellaneous costs. The increase over the current level is required to cover additional costs in the areas of investigations and training.

CAPITOL POLICE BOARD

1978 appropriation	$1,572,000
1979 budget estimate	1,467,800
House allowance	1,421,000
Committee recommendation	1,421,000

The Committee recommends an appropriation of $1,421,000, which is a reduction of $151,000 below the 1978 appropriation, $46,800 below the budget estimate and the same as the House allowance.

The Capitol Police Board consists of the Sergeant at Arms of the Senate, the Sergeant at Arms of the House and the Architect of the Capitol. The funds included in this appropriation are for reimbursement to the Metropolitan Police Department of the District of Columbia for the 34 police officers detailed to the U.S. Capitol Police. The bill includes the customary language relating to the rank and salary of Metropolitan Police officers detailed to the Capitol force, which has been updated as requested by the Chief of Police and the Capitol Police Board. The reduced level of funding in fiscal year 1979 reflects the decrease from 38 to 34 in the number of Metropolitan police assigned to the Capitol Police Board including $46,800 associated with the retirement of two officers which had not been contemplated in the formulation of the budget request.

Education of Pages

1978 appropriation	$193,700
1979 budget estimate	205,800
House allowance	205,800
Committee recommendation	205,800

The Committee recommends an appropriation of $205,800, which is an increase of $12,100 over the 1978 appropriation and the same as the budget estimate and the House allowance.

This appropriation supports the educational costs of Congressional and Supreme Court pages by reimbursement to the District of Columbia for the operation of the Capitol Page School, including salaries, books, equipment and other expenses.

The Committee continues to be concerned with the quality and condition of the program at the Capitol Page School. Accordingly, the Committee joins with the House Appropriations Committee and requests that the Comptroller General initiate a review on the Capitol Page School to determine whether educational and other services are being provided consistent with the existing contract between the Congress and the Board of Education of the District of Columbia and consistent with the appropriations made as reimbursement to the Board of Education. The Committee also requests that the Comptroller General identify what deficiencies, if any, exist in the supplies, facilities, administration, and course of study at the Capitol Page School as compared to what is generally considered appropriate and necessary for a high quality program of secondary education.

Official Mail Costs

1978 appropriation	$48, 926, 000
1979 budget estimate	64, 944, 000
House allowance	64, 944, 000
Committee recommendation	64, 944, 000

The Committee recommends an appropriation of $64,944,000, which is an increase of $16,018,000 over the 1978 appropriation and the same as the budget estimate and the House allowance.

This appropriation provides funds for reimbursement of the United States Postal Service for official mail sent out by Congress. Inasmuch as only estimates can be made as to the volume of outgoing mail, the usual language has been included in the bill making the appropriation immediately available on enactment into law so that payments can be made from 1979 funds for any shortages in 1978 funds that may occur. The Committee recommends that the General Accounting Office, as part of its current audit of the Senate Post Office, examine the validity of the method employed by the Postal Service in formulating its billings for Official Mail.

Capitol Guide Service

1978 appropriation	$403, 700
1979 budget estimate	544, 000
House allowance	544, 000
Committee recommendation	544, 000

The Committee recommends an appropriation of $544,000, which is an increase of $140,300 over the 1978 appropriation and the same as the budget estimate and the House allowance.

The estimate for this appropriation includes funds for salaries, agency contributions, longevity compensation and expenses of the Capitol Guide Service.

Language has been included in the bill authorizing the Capitol Guide Board to hire two employees to fill temporary vacancies for a period of not to exceed one hundred twenty days. This authority was requested by the Board to insure a full complement of guides during such times as permanent members of the service are on leaves of absence for illness or other reasons. Language has also been included to allow the Board to employ up to 10 additional individuals for not more than six months each. These temporary employees are needed to handle the expected increase in tourists visiting the Capitol during the summer months and other times during the year.

OFFICE OF TECHNOLOGY ASSESSMENT

Salaries and Expenses

1978 appropriation	$7, 400, 000
1979 budget estimate	10, 000, 000
House allowance	9, 700, 000
Committee recommendation	9, 700, 000

The Committee recommends an appropriation of $9,700,000, which is an increase of $2,300,000 over the 1978 appropriation, the same as the House allowance and $300,000 below the budget estimate.

The Office of Technology Assessment (OTA) was created by the Technology Assessment Act of 1972 to help the Congress anticipate and plan for the consequences of uses of technology. The Office provides an independent and objective source of information about the impacts, both beneficial and adverse, of technological applications, and identifies policy alternatives for technology-related issues. The Office began operations in January 1974.

The bill includes language limiting employment during fiscal year 1979 to 130 staff employees, except that any reduction in total employment shall be accomplished by attrition and provides further that this limitation shall not prevent the position of Director from being filled should it become vacant. A continuation of the language in the fiscal year 1978 appropriations bill authorizing the leasing of space in the District of Columbia is also recommended. The requested language to continue the availability of fiscal year 1978 unobligated balances has been denied.

CONGRESSIONAL BUDGET OFFICE

Salaries and Expenses

1978 appropriation	$10, 400, 000
1979 budget estimate	11, 368, 000
House allowance	11, 172, 000
Committee recommendation	11, 368, 000

The Committee recommends an appropriation of $11,368,000, which is an increase of $968,000 over the 1978 appropriation, the same as the budget estimate and $196,000 over the House allowance.

The Congressional Budget Office was created by title II of the Congressional Budget and Impoundment Control Act of 1974 to provide assistance to the Congress in fulfilling its responsibilities to assure effective congressional control over the budgetary process; determine each year the appropriate level of Federal revenues and expenditures; and establish national budget priorities.

The funding level recommended by the Committee will allow the Congressional Budget Office to operate at substantially the same level in 1979 as in 1978. The restoration of the House reduction of $196,000 is intended to allow the partial year funding of 10 additional positions which would allow the CBO to undertake detailed analysis of any inflationary aspect of major legislative proposals on a regular basis. This effort would involve analyses of the effect of proposed legislative actions on aggregate prices and the Consumer Price Index. The language limiting personnel has been increased by 10 positions for a total of 218 positions for fiscal year 1979, an increase of 10 over the current level.

ARCHITECT OF THE CAPITOL

Office of the Architect of the Capitol

1978 appropriation	$2, 122, 800
1979 budget estimate	2, 855, 300
House allowance	2, 592, 000
Committee recommendation	2, 592, 000

The Committee recommends an appropriation of $2,592,000, which is an increase of $469,200 over the 1978 appropriation, $263,300 below the budget estimate and the same as the House allowance.

This appropriation supports a staff of 91 employees in the central office of the Architect of the Capitol. The activities funded under this appropriation include such functions as management, procurement, contracting, accounting, budgeting, and personnel operations, as well as overall professional direction of design, planning, construction, legal, and other project activities.

The Committee, in addition to concurring in the House allowance which provided a program increase of 11 positions and $138,000, recommends two additional GS–13 central-office staff assistant positions to improve the ability of the Architect to respond to day-to-day activities of his office. Since 1964, ten additional buildings have been placed under the jurisdiction of the Architect, increasing the floor space from 5,366,598 square feet to 10,855,943 square feet. Over the past several years duties and responsibilities of the Architect have broadened and expanded. The addition of these 2 central-office staff assistants will allow the Architect to keep on top of the problems and provide timely solutions to day-to-day affairs of his office.

The 2 positions added by the Senate to the House allowance of 11 positions results in a total addition of 13 positions, which will increase the total of 78 allowed for 1978 to 91 for 1979. The additional two positions are to be financed within the resources recommended by the House.

The overall increase of 13 positions will strengthen the legal, budgetary, and administrative staff of the Architect and also assist in handling the central-office staff workload resulting principally from the modifications and enlargement of the Capitol Power Plant and the completion and occupancy of the Library of Congress James Madison Memorial Building.

Also included in the above amounts is the sum of $210,000, which is $90,000 above the amount allowed for 1978, and the same as the budget estimate for contingent expenses, to enable the Architect to make surveys and studies and to meet unforeseen expenses in connection with activities under the care of the Architect.

The Committee has continued the authority for travel, including the $20,000 limitation, which has been in effect for a number of years.

Capitol Buildings and Grounds

CAPITOL BUILDINGS

1978 appropriation	$5, 516, 000
1979 budget estimate	6, 414, 500
House allowance	6, 157, 000
Committee recommendation	6, 157, 000

The Committee recommends an appropriation of $6,157,000, which is an increase of $641,000 above the 1978 appropriation, $257,500 below the budget estimate and the same as the House allowance.

This appropriation supports a staff of 215 employees to provide for the structural and mechanical care of the Capitol; miscellaneous improvements; operation of the mechanical equipment; maintenance and operation of the transformer stations in the Capitol group of buildings; maintenance of the grounds lighting systems and other maintenance requirements of the Capitol building with its 16½ acres of floor area.

The Committee concurs in the House allowance which includes a program increase of 5 additional positions and $60,600, for 4 laborer positions and one nurse position. The allowance of 5 additional positions will increase the total of 210 allowed for 1978 to 215 for 1979.

CAPITOL GROUNDS

1978 appropriation	$1, 919, 500
1979 budget estimate	4, 241, 300
House allowance	2, 565, 000
Committee recommendation	2, 565, 000

The Committee recommends an appropriation of $2,565,000, which is an increase of $645,500 over the 1978 appropriation, $1,676,300 below the budget estimate, and the same as the House allowance.

This appropriation supports a staff of 80 employees to provide for the care of the Capitol Grounds which includes approximately 160 acres of lawn areas, sidewalks, streets and roadways; thousands of trees and shrubs; underground sewer and drainage systems; House and Senate parking lots; the Taft Memorial; 248 traffic signals; the care and operation of the grounds' motor and other equipment; and other miscellaneous requirements.

The Committee recommends that within the resources provided in the bill, the Architect take steps to replace damaged exposed precast pavers on the terrace level and make emergency repairs on defective sections of west front walkways. The Committee notes the serious state of disrepair of these areas and urges continuation of the program initiated in fiscal year 1978 to replace the precast pavers and make other emergency repairs in order to preclude the possibility of serious injury to visitors and other pedestrians.

SENATE OFFICE BUILDINGS

1978 appropriation	$9, 102, 000
1979 budget estimate	10, 328, 600
House allowance	
Committee recommendation	10, 328, 600

The Committee recommends an appropriation of $10,328,600, which is an increase of $1,226,600 above the 1978 appropriation and the same as the budget estimate.

This appropriation supports a staff of 509 employees to provide for the structural, mechanical and janitorial care of the 925 office and Committee rooms in the two Senate Office Buildings, as well as the several other buildings temporarily converted to office space and the operation of the mechanical equipment, and maintenance of the subway transportation systems.

The Committee recommendation provides a program increase of 12 additional positions and $142,800, of which 5 are required for the domestic care of space leased and occupied by the Senate Computer

Center at 400 North Capitol Street, and 7 are required to meet the increased demands for service in the Senate Office Buildings complex. The allowance of 12 additional positions will increase the total of 497 allowed for 1978 to 509 for 1979.

SENATE GARAGE

1978 appropriation	$153,500
1979 budget estimate	164,000
House allowance	
Committee recommendation	164,000

The Committee recommends an appropriation of $164,000, which is an increase of $10,500 over the 1978 appropriation and the same as the budget estimate.

This appropriation supports a staff of 7 employees to provide for repairs and maintenance of the Senate Garage, which has a floor area of 71,000 square feet and contains 187 parking stalls, reserved for Senators and their staffs and for government-owned trucks and cars for official use of the Legislative Branch. The remaining space is reserved for the grounds' maintenance equipment.

CAPITOL POWER PLANT

1978 appropriation	$12,317,000
1979 budget estimate	15,544,700
House allowance	13,635,000
Committee recommendation	13,635,000

The Committee recommends an appropriation of $13,635,000, which is an increase of $1,318,000 over the 1978 appropriation and $1,909,700 below the budget estimate and the same as the House allowance.

This appropriation supports a work force of 104 employees for the operation and maintenance of the Capitol Power Plant. The plant provides heat, light, power and air conditioning refrigeration for the Capitol, Senate and House Office Buildings, U.S. Supreme Court Building, and Library of Congress Buildings; heat, light and power for the United States Botanic Garden, and the Senate and House Garages; light for the Capitol Grounds street, park and floodlighting system; and steam heat for the Government Printing Office, the Washington City Post Office, and the Folger Shakespeare Library.

The Committee concurs in the House allowance which includes a program increase of 12 additional positions and $180,000, required for the operation and maintenance of the modified and enlarged Capitol Power Plant facilities. The allowance of 12 additional positions will increase the total of 92 allowed for 1978 to 104 for 1979.

The Committee has approved language to allow reimbursements for chilled water and steam provided to the Supreme Court, Folger Library, City Post Office, and Government Printing Office to be credited to this appropriation. Also, language has been included to allow funds previously appropriated for the expansion of the Capitol Power Plant to be used for furniture and furnishings for that facility.

LIBRARY OF CONGRESS

Congressional Research Service

SALARIES AND EXPENSES

1978 appropriation	$21,795,000
1979 budget estimate	26,379,000
House allowance	25,553,000
Committee recommendation	25,553,000

The Committee recommends an appropriation of $25,553,000, which is an increase of $3,758,000 over the 1978 appropriation, $826,000 below the budget estimate and the same as the House allowance.

The Congressional Research Service constitutes a nonpartisan, nonadvocacy, pooled staff of the Congress, responding to the entire range of congressional research, analytical and information needs. The services that the Service now provides include: analysis of policy issues before Congress, special research assistance to Members and congressional committees, legal research and analysis, consultation with Members and staff, access to a variety of automated data bases, and general information and reference assistance.

The increase over fiscal 1978 provides funding for the mandatory and inflationary increases required to maintain service at the current level. The request for 1979, which totaled $26,379,000, has been reduced $826,000 and 8 positions. The Committee has, however, allowed an increase of 9 positions over the House allowance to improve and strengthen the Congressional Reference Division and to provide additional travel funds in order to more effectively support congressional needs for current information. The additional positions would allow increased use of existing space and support facilities such as photocopiers, word processors, and computer terminals on a night shift and are to be financed within existing resources. The Committee allowance also provides that any additional travel is to be financed within existing resources, including $20,000 for attendance at meetings. This limitation has been increased in recognition of the fact that the Congressional Research Service has not had sufficient travel funds to keep its professional staff fully aware of quickly changing knowledge and unpublished information about matters important to the Congress. This has been a long neglected area in the CRS budget. Testimony before the Committee in support of this recommendation indicated that even with the additional funds requested, the totals would still be substantially less than that of the other congressional support agencies (CBO, OTA and GAO) based on relative numbers of professional staff. In approving this requested increase, the Committee in no way endorses travel for travel's sake, and will expect that the CRS top management will greatly strengthen monitoring of travel and report back to the Committees on Appropriations of the Senate and House such a monitoring system as they may develop.

GOVERNMENT PRINTING OFFICE

Congressional Printing and Binding

1978 appropriation	$71,674,000
1979 budget estimate	73,961,000
House allowance	73,961,000
Committee recommendation	73,961,000

The Committee recommends an appropriation of $73,961,000, which is an increase of $2,287,000 over the 1978 appropriation, and the same as the budget request and the House allowance.

This appropriation provides funds with which to pay for the cost of printing and binding required for the use of Congress. The principal categories of printing and binding required for the use of Congress include the Congressional Record; bills, resolutions and amendments; committee reports; Senate and House documents; Congressional Committee hearings; and miscellaneous publications such as Senate and House journals.

TITLE II—RELATED AGENCIES

BOTANIC GARDEN

Salaries and Expenses

1978 appropriation	$1,283,000
1979 budget estimate	1,391,600
House allowance	1,392,000
Committee recommendation	1,392,000

The Committee recommends an appropriation of $1,392,000, which is an increase of $109,000 over the 1978 appropriation and the same as the budget estimate and the House allowance.

The appropriation supports a regular force of 57 employees to provide for the care and upkeep of the botanic garden and grounds. The purpose of the United States Botanic Garden is to collect, cultivate, and grow the various vegetable productions of this and other countries for exhibition and display to the public and for study material for students, scientists, and garden clubs.

The Botanic Garden has been an activity within the Legislative Branch under the jurisdiction of the Joint Committee on the Library since 1820. However, only a small percentage of their activities relate to the Congress. The cost of services furnished to the Congress, based on the 1976 appropriation, represents approximately 14 percent of the total cost of operating the Botanic Garden. The remaining 86 percent of the appropriation was expended in carrying out the primary purpose of the Botanic Garden outlined above.

LIBRARY OF CONGRESS

Salaries and Expenses

1978 appropriation	$81,295,000
1979 budget estimate	102,058,000
House allowance	92,249,000
Committee recommendation	92,249,000

The Committee recommends an appropriation of $92,249,000, which is an increase of $10,954,000 over the 1978 appropriation, $9,809,000 below the budget estimate and the same as the House allowance.

This appropriation supports the basic operations and management of the Library of Congress which are carried on by the Processing Department, the Research Department, the Reader Services Department, the Law Library, the Administrative Department, and the Librarian's Office.

The House, in its action on the bill, reduced the request by $9,809,000 and 398 positions, recommending a total of $92,249,000 and 3,186 positions. The House allowance is $10,954,000 above the 1978 appropriation and reflects the increased costs attributable to inflation, increased pay costs, and certain other mandatory increases. In almost all instances, the House recommendation merely continues operations at the current level.

The Committee has recommended an increase of 19 positions above the House allowance. These positions are to be funded within the resources provided in the House allowance.

The Committee recommends 13 positions over the House allowance for automated data systems so that the Library can maintain its services to the Congress and also continue development of a national bibliographic network. The allowance is intended to fund two large scale computers and one medium sized computer, rather than the three large scale computers originally requested.

The Committee is aware of the fact that the Library may soon have an opportunity to acquire a medium sized computer through exercise of a lease-purchase option. The Committee would have no objection to such a purchase as long as the benefits outweigh the costs. Indeed, the Committee believes the Library would be remiss if, after a favorable cost-benefit analysis, such an option were not exercised.

The Committee would have no objection to an increase of 4 positions and $143,000 to support the Library's traveling exhibit program so that the significant planned exhibits can be seen throughout the country so long as it can be accomplished within the total amount recommended by the House.

The Committee also would have no objection to an additional position and a total of $49,000 for the American Television and Radio Archives for coordination of technical services and for additional equipment needed to acquire television programing so long as it can be accomplished within existing resources.

The Committee would have no objection to an additional position and $49,000 for the American Folklife Institute. Although this is not as much as the increase proposed in the budget, the Committee believes that the increase included in the bill should be sufficient to provide for the necessary expenses of the American Folklife Center for fiscal year 1979. If, during fiscal year 1979, the Librarian should determine that additional funds can be justified, the Committee would have no objection to consideration of such a reprograming request.

LINCOLN'S GETTYSBURG ADDRESS

The Library of Congress has agreed to loan to the Department of the Interior an original copy of Lincoln's Gettsyburg Address for the National Park Service to display at the Gettysburg National Park, Pa. Under this agreement, an original copy of the address is to be displayed during the months of June, July, and August for each of the next 5 years, beginning in 1979.

The agreement has been approved by the Joint Committee on the Library, and the Committee on Appropriations strongly urges the Library of Congress and the Department of the Interior to complete promptly arrangements so the millions of visitors who tour the Battlefield Park annually will have the opportunity to see this document, which plays such a valuable part of our national heritage.

COPYRIGHT OFFICE

SALARIES AND EXPENSES

1978 appropriation	$7,945,500
1979 budget estimate	8,560,500
House allowance	8,560,500
Committee recommendation	8,560,500

The Committee recommends an appropriation of $8,560,500, which is an increase of $615,000 over the 1978 appropriation and the same as the budget estimate and the House allowance.

The Copyright Office is responsible for administering the copyright law of the United States which was completely revised by the Act of October 19, 1976. This involves operation of various separate but closely interrelated registration, deposit, and recordation systems as required by Title 17 of the U.S. Code.

The Committee concurs in the House increase of $615,000 over the 1978 appropriation including 44 (net) new positions requested to further implement the new copyright law that became effective for the most part on January 1, 1978. The Copyright Act of 1976, signed on October 19, 1976, is a general revision of the Act of 1909 and is, in effect, an entirely new statute completely changing the existing law and procedures.

The Committee has authorized use of $4,600,000 of receipts from funds paid to the Copyright Office; this is an increase of $1,600,000 over the amount for 1978. Through the Legislative Branch Appropriations Act of 1978, Section 203 of Title 17 was changed in order to permit the receipts from copyright activities to be credited to the appropriation. The limitation on the use of these receipts has been increased to permit an anticipated increase in receipts to offset the increased cost of operating the Copyright Office in fiscal 1979.

Books for the Blind and Physically Handicapped

SALARIES AND EXPENSES

1978 appropriation	$28,720,700
1979 budget estimate	43,072,700
House allowance	36,729,700
Committee recommendation	36,729,700

The Committee recommends an appropriation of $36,729,700, which is an increase of $8,009,000 over the 1978 appropriation, $6,343,000 below the budget estimate, and the same as the House allowance.

This appropriation supports a national reading program for blind and physically handicapped citizens. Books and magazines in braille and various recorded formats are selected by the Division for the Blind and Physically Handicapped for distribution through a network of state and locally-supported libraries. At present, 56 regional libraries in 48 states, the District of Columbia, Virgin Islands, and Puerto Rico house and circulate books and magazines to eligible readers. One hundred and two subregional libraries in 21 states assist at the local public library level. Forty-four libraries and 17 cooperating agencies distribute sound reproducers. Four multistate centers, under contract to the division, store and distribute books and other materials in their geographical regions.

The increase over fiscal 1978 of $8,009,000 will provide for a continuation of the operations at the 1978 level allowing the increases requested for inflation, salary increases, and other mandatory costs, plus an expansion in the services enumerated below. Two of the seven additional positions requested are approved.

The Committee has allowed increases for expansion of services as follows: (1) $400 for attendance at meetings; (2) $138,000 for multistate centers; (3) $13,600 for books and library materials; (4) $1,200,000 for sound reproductions; (5) $2,912,000 for replacement of machines; and (6) $24,000 for music books. The total amounts that will be available under these programs are as follows: (1) attendance at meetings, $4,300; (2) multistate centers, $578,000; (3) books and library materials, $63,400; (4) sound reproductions, $12,922,100; (5) replacement of machines, $13,155,375; and (6) music books, $398,709.

Collection and Distribution of Library Materials

(special foreign currency program)

1978 appropriation	$3,441,200
1979 budget estimate	3,860,100
House allowance	3,860,100
Committee recommendation	3,860,100

The Committee recommends an appropriation of $3,860,100, which is an increase of $418,900 over the 1978 appropriation and the same as the budget estimate and the House allowance.

The Special Foreign Currency Program sustains projects for the acquisition of publications in Egypt, India, Nepal, and Pakistan. In these countries, excess foreign currencies accrued to the credit of the United States are used to employ local staff, rent office space, prepare bibliographic data, purchase books, periodicals and other library materials, and ship comprehensive sets of these materials to the Library of Congress and 37 major research libraries in the United States which conduct area studies programs, as well as selected materials to the National Agricultural Library and the National Library of Medicine.

Furniture and Furnishings

1978 appropriation	$7,030,700
1979 budget estimate	9,455,200
House allowance	7,694,000
Committee recommendation	7,694,000

The Committee recommends an appropriation of $7,694,000 which is $663,300 over the 1978 appropriation, $1,761,200 below the budget estimate and the same as the House allowance.

This appropriation is required to purchase the furniture and equipment including that needed for the James Madison Memorial Library of Congress Building that is not covered in the construction contracts handled by the Architect of the Capitol. The Library is responsible for requesting appropriations for and procuring such things as bookshelves, card catalogs, movable partitions not attached to the building structure, carpeting, special purpose furniture, and general office furniture.

Administration Provisions

The following administrative provisions, all included in the House bill, are explained below:

Expenses of attendance at meetings.—Section 205 of the bill limits the amount that may be expended for the expenses of attendance at meetings. The limitation for 1978 is set at $99,600 which the Librarian requested to be increased to $173,300 to cover increased per diem and air fare rates, including $86,400 for the Congressional Research Service. The Committee has approved an increase of $36,900 which is $20,000 more than the House allowance. The increase in travel is to be accomplished within the amounts provided in the House allowance, and no additional funds are included in the bill specifically for travel purposes.

Support services to the Congressional Budget Office.—Section 207 repeats a technical adjustment to the language carried in the 1977 Act which authorizes the payment of Congressional Budget Office employees on a bi-weekly basis to make the method of payment compatible with the Library of Congress payroll system.

Support services to the Copyright Royalty Tribunal.—Section 208 has been included in the bill, as requested, to facilitate payment of employees on the same basis as Library and Congressional Budget Office personnel. Authorization for the furnishing of administrative support by the Library was provided in the enabling legislation which established the Tribunal.

ARCHITECT OF THE CAPITOL

Library Buildings and Grounds

structural and mechnical care

1978 appropriation	$2, 169, 100
1979 budget estimate	2, 794, 700
House allowance	2, 776, 000
Committee recommendation	2, 776, 000

The Committee recommends an appropriation of $2,776,000, which is an increase of $606,900 above the 1978 appropriation, $18,700 below the budget estimate, and the same as the House allowance.

This appropriation supports a staff of 97 employees to provide maintenance and operation of mechanical equipment and structural and mechanical care of the Main Library of Congress and the Annex, as well as care of the grounds.

The Committee concurs in the House allowance of 22 additional positions and $115,800 (four months funding) to begin staffing of the Library of Congress James Madison Memorial Building, required for the structural and mechanical care of that building. The allowance of 22 additional positions will increase the total of 75 for 1978 to 97 for 1979.

COPYRIGHT ROYALTY TRIBUNAL

Salaries and Expenses

1978 appropriation	$726, 000
1979 budget estimate	935, 000
House allowance	805, 000
Committee recommendation	805, 000

The Committee recommends an appropriation of $805,000, which is an increase of $79,000 over the 1978 appropriation, $130,000 below the budget estimate and the same as the House allowance.

This appropriation provides for operation of the Copyright Royalty Tribunal, which was created as an independent body in the Legislative Branch by Public Law 94–553, the General Revision of the Copyright Law. The purposes of the Tribunal are: (1) to make determinations about the adjustment of reasonable copyright royalty rates and payments related to (a) the production and distribution of phonorecords and public performance by means of coin-operated phonorecord players (juke-boxes), (b) use of published nondramatic musical works and other pictorial, graphic, and sculptural works, and (c) secondary transmission of performances (cable TV); and (2) to distribute royalty fees deposited with the Register of Copyrights related to cable TV and coin operated phonorecord players (juke-boxes).

The Library of Congress is charged with providing administrative support services to the Tribunal. Costs of such services are to be paid by the Tribunal to the Library of Congress.

GOVERNMENT PRINTING OFFICE

Printing and Binding

1978 appropriation	$12, 952, 500
1979 budget estimate	11, 476, 000
House allowance	11, 476, 000
Committee recommendation	11, 476, 000

The Committee recommends an appropriation of $11,476,000, which is a reduction of $1,476,500 below the 1978 appropriation, and the same as the budget estimate and the House allowance.

This appropriation provides funds with which to pay for the cost of printing, binding, and distribution of the Federal Register, and for printing and binding the Code of Federal Regulations; the printing and binding of various Congressional items such as the Congressional Record; bills, resolutions and amendments; committee reports; Senate and House documents; Congressional Committee hearings; and miscellaneous publications such as Senate and House Journals. All copies of Congressionally related items printed and bound under this appropriation are for distribution to Executive Branch agencies and to the general public. Printing and binding for the Congress itself is carried in the appropriation "Congressional printing and binding" in title I of the bill.

Office of Superintendent of Documents

salaries and expenses

1978 appropriation	$21, 751, 000
1979 budget estimate	23, 200, 000
House allowance	23, 200, 000
Committee recommendation	23, 200, 000

The Committee recommends an appropriation of $23,200,000, which is an increase of $1,449,000 over the 1978 appropriation and the same as the budget estimate and the House allowance.

This appropriation provides for salaries and expenses for the sale, distribution, and cataloging and indexing of Government documents to the public, for Members of Congress, and for other Government agencies.

The Committee has been informed the annual subscription price for the Congressional Record is not sufficient to recover the cost of printing, binding, and distribution. Currently, the subscription price is $45 per year, the rate set in 1971. Since that time, however, the Public Printer has testified that printing costs have increased by over 100%. The Committee suggests that the Public Printer seek the assistance of the Joint Committee on Printing to bring the subscription rates more nearly in line with costs.

GENERAL ACCOUNTING OFFICE

Salaries and Expenses

1978 appropriation	$167, 000, 000
1979 budget estimate	187, 843, 000
House allowance	185, 756, 000
Committee recommendation	185, 756, 000

The Committee recommends an appropriation of $185,756,000, which is an increase of $18,756,000 over the 1978 appropriation, $2,087,000 below the budget estimate, and the same as the House allowance.

The General Accounting Office is responsible for conducting independent reviews, audits, and investigations of programs, activities, and financial transactions of Federal agencies, for rendering legal decisions relating to Government fiscal matters; for developing principles, standards, and related requirements for Federal agency accounting systems, cooperating in developing agency systems, and approving them; for the settlement of certain claims for and against the Government; and for advising and assisting the Congress and Government agencies on matters relating to public funds.

The Committee recommendation includes a net increase of 120 staff positions made necessary by Congressionally mandated studies and an increase in GAO's defense-related workload. The reduction in the request is based on phasing in the additional staff over a six-month period rather than providing 12-month funding.

Savings From General Accounting Office Activities

The work of the Office does result in savings and collections which are several times the amount of their appropriation. As is shown below, collections and savings attributable to work by the General Accounting Office totaled over $5.6 billion in 1977.

Fiscal year 1977

Item	*Amount*
Deposited in the Treasury	$8, 037, 000
Offsets against amounts currently due	11, 718, 000
Subtotal	19, 755, 000
Measurable savings resulting from adoption of GAO recommendations and suggestions	5, 637, 059, 000
Total	[1] 5, 656, 814, 000

[1] Savings of approximately $4,468,216,000 are recurring and will continue in future years.

COST-ACCOUNTING STANDARDS BOARD

Salaries and Expenses

1978 appropriation	$1, 837, 000
1979 budget estimate	1, 850, 000
House allowance	1, 850, 000
Committee recommendation	1, 850, 000

The Committee recommends an appropriation of $1,850,000, which is an increase of $13,000 over the 1978 appropriation and the same as the budget estimate and the House allowance.

The function of the Board is to promulgate standards to achieve greater uniformity and consistency in cost-accounting practices to be followed by defense contractors and subcontractors under negotiated procurements in excess of $100,000.

TITLE III—GENERAL PROVISIONS

The House Committee, in its action, did recommend two new provisions (sections 304 and 305) for fiscal year 1979. Several provisions in prior year bills have been dropped as they are no longer necessary. Section 301 prohibits the use of funds for the care and maintenance of private vehicles except for such emergency assistance and cleaning as may be provided under regulations issued by the Committee on House Administration. Section 302 is the usual provision that no part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year unless so provided herein. Section 303 authorizes duplicate automobile tags for Members and Officers of the House and Senate. Section 304 continues for fiscal year 1979 the so called "cap" on upper level salaries in the Legislative, Executive, and Judicial branches of Government. Section 305 provides that the pay of Senate and House pages shall continue during the period between adjournment of the 95th Congress and the convening of the first session of the 96th Congress. Provisions similar to Section 305 have been included in previous appropriations bills.

The House also added sections 306, 307, 308 and 309 which relate to the operation of the House of Representatives and which, by long standing custom, are not considered by the Senate. The Senate committee has added section 310 which would extend the provisions of the revised longevity program carried in section 110 of this Act to telephone operators and members of the Capitol Police whose compensation is disbursed by the Clerk of the House of Representatives in the same manner and to the same extent as such provisions apply to individuals whose compensation is disbursed by the Secretary of the Senate. The text of the general provision is as follows:

> SEC. 310. (a) The provisions of subsections (a) and (b) of section 106 of the Legislative Branch Appropriation Act, 1963 (as amended by section 110 of this Act), shall apply to telephone operators (including the chief operator and assistant chief operators) on the United States Capitol telephone exchange and members of the Capitol Police whose compensation is disbursed by the Clerk of the House of Representatives in the same manner and to the same extent as such provisions apply to individuals whose compensation is disbursed by the Secretary of the Senate. For purposes of so applying such subsections, creditable service shall include service performed as an employee of the United States Capitol telephone exchange or a member of the Capitol Police whether compensation therefor is disbursed by the Clerk of the House of Representatives or the Secretary of the Senate.

The Senate Committee has also included a 5-percent reduction provision which is similar to the provision included in the bill as a House floor amendment after section 305 of the General Provisions.

The Senate provision does not include the restrictive and unworkable proviso specifying that of the amounts withheld, not to exceed 10 percent could be withheld from any one appropriation account, activity and project. The deletion of the proviso would allow more than 10 percent to be withheld from some appropriations, activities, and projects, a necessity if the intent of the 5 percent reduction is to be accomplished. The text of the General Provision is as follows:

> SEC. 311. Of the total budget authority provided in this Act, for payments not required by law, five per centum shall be withheld from obligation and expenditure.

BUDGETARY IMPACT OF H.R. 12935[1]

[In millions dollars]

	Budget authority		Outlays	
	Committee allocation	Amount in bill	Committee allocation	Amount in bill
I. Comparison of amounts in the bill with the committee allocation to its subcommittees of amounts in the First Concurrent Resolution for 1979:				
Subcommittee on Legislative	$1,200	$1,118	$1,200	[2] $1,170
II. Summary of functional category of 1979 budget amounts recommended in the bill:				
370—Commerce and housing credit		9		[2] 9
500—Education, training, employment, and social services		141		[2] 150
800—General government		968		[2] 1,011
III. Financial assistance to State and local governments for 1979 in the bill				
IV. Projections of outlays associated with budget authority recommended in the bill:				
1979				[2] 1,035
1980				76
1981				7
1982				
1983				
Future year				

[1] Prepared by the Congressional Budget Office pursuant to section 308a Public Law 93-344.
[2] Includes outlays from prior year budget authority.

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COMPARATIVE STATEMENT OF NEW BUDGET (OBLIGATIONAL) AUTHORITY FOR 1978 AND BUDGET ESTIMATES FOR 1979

PERMANENT NEW BUDGET (OBLIGATIONAL) AUTHORITY—FEDERAL FUNDS

[Becomes available automatically under earlier, or "permanent" law without further, or annual, action by the Congress. Thus, these amounts are not included in the accompanying bill. All amounts are in the form of "appropriations" unless otherwise indicated]

Agency and item	New budget (obligational) authority, 1978 [1]	Budget estimate of new (obligational) authority, 1979 [1]	Increase (+) or decrease (−)
(1)	(2)	(3)	(4)
LIBRARY OF CONGRESS			
Oliver Wendell Holmes devise fund (indefinite, special fund)	$8,000	$2,000	−$6,000

[1] Amounts as estimated and shown in the January 1978 budget document. Some items are indefinite in amount, and thus are subject to later reestimation.

PERMANENT NEW BUDGET (OBLIGATIONAL) AUTHORITY—TRUST FUND

[Becomes available automatically under earlier, or "permanent" law without further, or annual, action by the Congress. Thus, these amounts are not included in the accompanying bill. All amounts are in the form of "appropriations" unless otherwise indicated]

Agency and item	New budget (obligational) authority, 1978 [1]	Budget estimate of new (obligational) authority, 1979 [1]	Increase (+) or decrease (−)
(1)	(2)	(3)	(4)
LIBRARY OF CONGRESS			
Gift and trust fund accounts, nonrevolving	$6,048,000	$5,349,000	−$699,000

[1] Amounts as estimated and shown in the January 1978 budget document. Some items are indefinite in amount, and thus are subject to later reestimation.

COMPARATIVE STATEMENT OF NEW BUDGET (OBLIGATIONAL) AND AMOUNTS RECOMMENDED IN

[Amounts

Item	1978 Appropriation	Budget estimate
TITLE I - CONGRESSIONAL OPERATIONS		
SENATE		
Payments to widows and heirs of deceased members of Congress	180,000	---
Compensation and Mileage of the Vice President and Senators and Expense Allowances of the Vice President, the Leaders, and Whips of the Senate		
Compensation and mileage of the Vice President and Senators	6,474,300	6,480,000
Expense allowances of the Vice President, Majority and Minority Leaders and Majority and Minority Whips		
Vice President	10,000	10,000
Majority Leader of the Senate	5,000	5,000
Minority Leader of the Senate	5,000	5,000
Majority Whip of the Senate	2,500	2,500
Minority Whip of the Senate	2,500	2,500
Total, expense allowances	25,000	25,000
Total, Vice President and Senators	6,499,300	6,505,000
Salaries, Officers and Employees		
Office of the Vice President	723,000	767,000
Office of the President pro tempore	116,000	116,000
Office of the Deputy President pro tempore	111,100	116,000
Offices of the Majority and Minority Leaders	411,000	411,000
Floor assistants to the Majority and Minority Leaders	103,000	103,000
Offices of the Majority and Minority Whips	239,000	239,000
Offices of the secretaries of the conference of the Majority and the conference of the Minority	132,000	132,000
Office of the Chaplain	40,000	40,000
Office of the Secretary	3,426,000	4,116,000
Committee employees	9,529,000	10,528,000
Conference committees	688,000	750,000
Administrative, clerical, and Legislative assistance to Senators	60,665,000	70,881,000
Office of Sergeant at Arms and Doorkeeper	17,900,000	19,803,000
Offices of the secretaries for the Majority and Minority	411,000	411,000
Agency contributions and longevity compensation	7,285,000	7,785,000
Total, salaries, officers and employees	101,778,100	116,198,000
Office of the Legislative Counsel of the Senate		
Salaries and expenses	793,000	815,000

AUTHORITY FOR FISCAL YEAR 1978 AND BUDGET ESTIMATES THE BILL FOR FISCAL YEAR 1979

[In dollars]

House allowance	Committee recommendation	Increase (+) or decrease (−) compared with—		
		1978 Appropriation	Budget estimate	House allowance
---	---	-180,000	---	---
---	6,480,000	+5,700	---	+6,480,000
---	10,000	---	---	+10,000
---	5,000	---	---	+5,000
---	5,000	---	---	+5,000
---	2,500	---	---	+2,500
---	2,500	---	---	+2,500
---	25,000	---	---	+25,000
---	6,505,000	+5,700	---	+6,505,000
---	767,000	+44,000	---	+767,000
---	116,000	---	---	+116,000
---	---	-111,100	-116,000	---
---	411,000	---	---	+411,000
---	103,000	---	---	+103,000
---	239,000	---	---	+239,000
---	132,000	---	---	+132,000
---	40,000	---	---	+40,000
---	4,116,000	+690,000	---	+4,116,000
---	10,528,000	+1,000,000	---	+10,528,000
---	750,000	+62,000	---	+750,000
---	70,881,000	+10,216,000	---	+70,881,000
---	19,803,000	+1,903,000	---	+19,803,000
---	411,000	---	---	+411,000
---	7,785,000	+500,000	---	+7,785,000
---	116,082,000	+14,303,900	-116,000	+116,082,000
---	815,000	+22,000	---	+815,000

COMPARATIVE STATEMENT OF NEW BUDGET (OBLIGATIONAL) AND AMOUNTS RECOMMENDED IN THE

[Amounts

Item	1978 Appropriation	Budget estimate
Contingent Expenses of the Senate		
Senate policy committees	1,272,000	1,389,000
Automobiles and maintenance	50,000	60,000
Inquiries and investigations	29,995,000	30,625,000
Folding documents	103,000	103,000
Miscellaneous items	25,492,000	29,443,000
Postage stamps	25,200	6,000
Stationery (revolving fund)	37,300	39,000
Total, contingent expenses of the Senate	56,974,500	61,664,000
Total, Senate	166,224,900	185,182,000
HOUSE OF REPRESENTATIVES		
Compensation and Mileage for the Members		
Compensation of Members	27,760,400	27,699,300
Mileage of Members	210,000	210,000
Total, compensation and mileage for the Members	27,970,400	27,909,300
House Leadership Offices		
Office of the Speaker	520,400	545,300
Office of the Majority Floor Leader	369,100	384,100
Office of the Minority Floor Leader	464,100	479,100
Office of the Majority Whip	399,000	416,800
Office of the Minority Whip	304,000	321,800
Total, House leadership offices	2,056,600	2,147,100
Salaries, Officers and Employees		
Office of the Clerk	5,819,000	7,541,600
Office of the Sergeant at Arms	9,352,700	10,889,900
Office of the Doorkeeper	3,700,600	4,343,000
Office of the Postmaster	1,116,600	1,177,100
Office of the Chaplain	22,100	23,700
Office of the Parliamentarian	197,600	250,000
Compilation of precedents of the House of Representatives	288,600	295,000
Official reporters of debates	536,300	---
Official reporters to committees	619,600	---
Two printing clerks for majority and minority	31,300	33,500
Technical assistant, Office of the Attending Physician	28,700	30,700
House Democratic Steering Committee	382,000	308,900
House Democratic Caucus	73,300	83,600
House Republican Conference	455,300	542,500
Six minority employees	280,550	272,500
L.B.J. interns	---	562,000
Former Speakers' staffs	---	87,200
Total, salaries, officers and employees	22,904,250	26,441,200

AUTHORITY FOR FISCAL YEAR 1978 AND BUDGET ESTIMATES BILL FOR FISCAL YEAR 1979—Continued

[In dollars]

House allowance	Committee recommendation	Increase (+) or decrease (−) compared with—		
		1978 Appropriation	Budget estimate	House allowance
---	1,388,000	+116,000	---	+1,388,000
---	58,000	+8,000	-2,000	+58,000
---	30,625,000	+630,000	---	+30,625,000
---	103,000	---	---	+103,000
---	29,443,000	+3,951,000	---	+29,443,000
---	6,000	-19,200	---	+6,000
---	39,000	+1,700	---	+39,000
---	61,662,000	+4,687,500	-2,000	+61,662,000
---	185,064,000	+18,839,100	-118,000	+185,064,000
27,699,300	27,699,300	-61,100	---	---
210,000	210,000	---	---	---
27,909,300	27,909,300	-61,100	---	---
545,300	545,300	+24,900	---	---
384,100	384,100	+15,000	---	---
479,100	479,100	+15,000	---	---
416,800	416,800	+17,800	---	---
321,800	321,800	+17,800	---	---
2,147,100	2,147,100	+90,500	---	---
7,541,600	7,541,600	+1,722,600	---	---
10,889,900	10,889,900	+1,537,200	---	---
4,343,000	4,343,000	+642,400	---	---
1,177,100	1,177,100	+60,500	---	---
23,700	23,700	+1,600	---	---
250,000	250,000	+52,400	---	---
295,000	295,000	+6,400	---	---
---	---	-536,300	---	---
---	---	-619,600	---	---
---	---	-31,300	-33,500	---
30,700	30,700	+2,000	---	---
308,900	308,900	-73,100	---	---
83,600	83,600	+10,300	---	---
542,500	542,500	+87,200	---	---
272,500	272,500	-8,050	---	---
562,000	562,000	+562,000	---	---
87,200	87,200	+87,200	---	---
26,407,700	26,407,700	+3,503,450	-33,500	---

COMPARATIVE STATEMENT OF NEW BUDGET (OBLIGATIONAL) AND AMOUNTS RECOMMENDED IN THE

[Amounts

Item	1978 Appropriation	Budget estimate
Committee Employees		
Professional and clerical employees (standing committees)	24,705,000	24,705,000
Committee on Appropriations (Studies and Investigations)		
Salaries and expenses	2,768,000	2,895,000
Committee on the Budget (Studies)		
Salaries and expenses	261,000	261,000
Office of the Law Revision Counsel		
Salaries and expenses	394,350	435,000
Office of the Legislative Counsel		
Salaries and expenses	1,692,000	1,879,000
Members' Clerk Hire		
Clerk hire	107,192,000	112,648,300
Contingent Expenses of the House		
Allowances and Expenses		
Official expenses of Members	---	38,367,989
Computer and related services for Members	3,500,000	---
Constituent communication expenses	2,738,400	---
Equipment (purchase, lease and maintenance)	6,418,000	---
Official expenses	3,073,000	---
Postage stamps	97,700	---
Rental of district office space (private and Federal)	6,739,280	---
Transportation for Members and staff	3,494,000	---
Telegraph and telephone	10,812,500	---
Supplies and materials	1,712,000	---
Supplies, materials and administrative costs	---	2,578,511
Furniture and furnishings	2,020,000	1,085,000
Reporting hearings	1,598,000	1,501,000
Salaries authorized by House resolutions	2,340,000	---
Reemployed annuitants reimbursement	---	1,089,700
Government contributions	12,343,000	14,000,000
Miscellaneous items	299,120	314,800
Total, allowances and expenses	57,185,000	59,967,000
Stationery (Revolving Fund)		
Allowances	2,853,500	---

AUTHORITY FOR FISCAL YEAR 1978 AND BUDGET ESTIMATES BILL FOR FISCAL YEAR 1979—Continued

[In dollars]

House allowance	Committee recommendation	Increase (+) or decrease (−) compared with—		
		1978 Appropriation	Budget estimate	House allowance
24,705,000	24,705,000	---	---	---
2,895,000	2,895,000	+127,000	---	---
261,000	261,000	---	---	---
435,000	435,000	+40,650	---	---
1,879,000	1,879,000	+197,000	---	---
112,648,300	112,648,300	+5,456,300	---	---
38,367,989	38,367,989	+38,367,989	---	---
---	---	-3,500,000	---	---
---	---	-2,738,400	---	---
---	---	-6,418,000	---	---
---	---	-3,073,000	---	---
---	---	-97,700	---	---
---	---	-6,739,280	---	---
---	---	-3,494,000	---	---
---	---	-10,812,500	---	---
---	---	-1,712,000	---	---
2,578,511	2,578,511	+2,578,511	---	---
1,085,000	1,085,000	-935,000	---	---
1,501,000	1,501,000	-97,000	---	---
---	---	-2,340,000	---	---
2,099,700	2,099,700	+2,099,700	---	---
14,000,000	14,000,000	+1,657,000	---	---
334,800	334,800	+35,680	---	---
59,967,000	59,967,000	+2,782,000	---	---
---	---	-2,853,500	---	---

COMPARATIVE STATEMENT OF NEW BUDGET (OBLIGATIONAL) AND AMOUNTS RECOMMENDED IN THE

[Amounts

Item	1978 Appropriation	Budget estimate
Special and Select Committees		
Salaries and expenses	32,700,000	46,762,000
Total, contingent expenses of the House	92,738,500	106,729,000
Total, House of Representatives	282,672,100	306,049,900
JOINT ITEMS		
Contingent Expenses of the Senate		
Joint Economic Committee	1,697,100	2,353,000
Joint Committee on Printing	1,081,000	656,000
Total, contingent expenses of the Senate	2,778,100	3,009,000
Joint Committee on Taxation		
Salaries and expenses	1,948,100	2,375,200
Office of the Attending Physician		
Medical supplies, equipment, expenses, and allowances	344,200	465,000
Capitol Police		
General expenses	724,800	750,100
Capitol Police Board	1,572,000	1,467,800
Total, Capitol Police	2,296,800	2,217,900
Education of Pages		
Education of congressional pages and pages of the Supreme Court	193,700	205,800
Official Mail Costs		
Expenses	48,926,000	64,944,000
Capitol Guide Service		
Salaries and expenses	403,700	544,000
Statements of Appropriations		
Preparation	13,000	13,000
Total, joint items	56,903,600	73,773,900

AUTHORITY FOR FISCAL YEAR 1978 AND BUDGET ESTIMATES BILL FOR FISCAL YEAR 1979—Continued

In dollars]

House allowance	Committee recommendation	Increase (+) or decrease (−) compared with—		
		1978 Appropriation	Budget estimate	House allowance
46,762,000	46,762,000	+14,062,000	---	---
106,729,000	106,729,000	+13,990,500	---	---
306,016,400	306,016,400	+23,344,300	-33,500	---
2,353,000	2,353,000	+655,900	---	---
656,000	656,000	-425,000	---	---
3,009,000	3,009,000	+230,900	---	---
2,375,200	2,375,200	+427,100	---	---
465,000	465,000	+120,800	---	---
750,100	750,100	+25,300	---	---
1,421,000	1,421,000	-151,000	-46,800	---
2,171,100	2,171,100	-125,700	-46,800	---
205,800	205,800	+12,100	---	---
64,944,000	64,944,000	+16,018,000	---	---
544,000	544,000	+140,300	---	---
13,000	13,000	---	---	---
73,727,100	73,727,100	+16,823,500	-46,800	---

COMPARATIVE STATEMENT OF NEW BUDGET (OBLIGATIONAL) AND AMOUNTS RECOMMENDED IN THE

[Amounts

Item	1978 Appropriation	Budget estimate
OFFICE OF TECHNOLOGY ASSESSMENT		
Salaries and expenses	7,400,000	11,000,000
CONGRESSIONAL BUDGET OFFICE		
Salaries and expenses	10,400,000	11,368,000
ARCHITECT OF THE CAPITOL		
Office of the Architect of the Capitol		
Salaries	2,002,800	2,645,300
Contingent expenses	120,000	210,000
Total, Office of the Architect of the Capitol	2,122,800	2,855,300
Capitol Buildings and Grounds		
Capitol buildings	5,516,000	6,414,500
Capitol grounds	1,919,500	4,241,300
Senate office buildings	9,102,000	10,328,600
Senate garage	153,500	164,000
House office buildings	18,176,900	21,065,100
Capitol Power Plant (operation)	12,317,000	15,544,700
Total, Capitol buildings and grounds	47,184,900	57,758,200
Total, Architect of the Capitol (except Library buildings and grounds)	49,307,700	60,613,500
LIBRARY OF CONGRESS		
Congressional Research Service		
Salaries and expenses	21,795,000	26,379,000
GOVERNMENT PRINTING OFFICE		
Congressional printing and binding	71,674,000	73,961,000
Total, title I - Congressional Operations	666,377,300	747,327,300
TITLE II - RELATED AGENCIES		
BOTANIC GARDEN		
Salaries and expenses	1,283,000	1,391,600

AUTHORITY FOR FISCAL YEAR 1978 AND BUDGET ESTIMATES BILL FOR FISCAL YEAR 1979—Continued

[In dollars]

House allowance	Committee recommendation	Increase (+) or decrease (−) compared with—		
		1978 Appropriation	Budget estimate	House allowance
9,700,000	9,700,000	+2,300,000	−300,000	---
11,172,000	11,368,000	+968,000	---	+196,000
2,382,000	2,382,000	+379,200	−263,300	---
210,000	210,000	+90,000	---	---
2,592,000	2,592,000	+469,200	−263,300	---
6,157,000	6,157,000	+641,000	−257,500	---
2,565,000	2,565,000	+645,500	−1,676,300	---
---	10,328,600	+1,226,600	---	+10,328,600
---	164,000	+10,500	---	+164,000
21,065,000	21,065,000	+2,888,100	−100	---
13,635,000	13,635,000	+1,318,000	−1,909,700	---
43,422,000	53,914,600	+6,729,700	−3,843,600	+10,492,600
46,014,000	56,506,600	+7,198,900	−4,106,900	+10,492,600
25,553,000	25,553,000	+3,758,000	−826,000	---
73,961,000	73,961,000	+2,287,000	---	---
546,143,500	741,896,100	+75,518,800	−5,431,200	+195,752,600
1,392,000	1,392,000	+109,000	+400	---

COMPARATIVE STATEMENT OF NEW BUDGET (OBLIGATIONAL) AND AMOUNTS RECOMMENDED IN THE

[Amounts

Item	1978 Appropriation	Budget estimate
LIBRARY OF CONGRESS		
Salaries and expenses	81,295,000	102,058,000
Copyright Office, salaries and expenses	7,945,500	8,560,500
National Commission on New Technological Uses of Copyrighted Works, salaries and expenses	520,500	---
Books for the blind and physically handicapped, salaries and expenses	28,720,700	43,072,700
Collection and distribution of library materials (special foreign currency program):		
Payments in Treasury-owned foreign currencies	3,184,600	3,603,500
U.S. dollars	256,600	256,600
Total, collection and distribution of library materials	3,441,200	3,860,100
Furniture and furnishings	7,030,700	9,455,200
Total, Library of Congress (except Congressional Research Service)	128,953,600	167,006,500
ARCHITECT OF THE CAPITOL		
Library Buildings and Grounds		
Structural and mechanical care	2,169,100	2,794,700
COPYRIGHT ROYALTY TRIBUNAL		
Salaries and expenses	726,000	935,000
GOVERNMENT PRINTING OFFICE		
Printing and binding	12,952,500	11,476,000
Office of Superintendent of Documents, salaries and expenses	21,751,000	23,200,000
Total, Government Printing Office (except Congressional printing and binding and acquisition of site and general plans and designs of building)	34,703,500	34,676,000
GENERAL ACCOUNTING OFFICE		
Salaries and expenses	167,000,000	187,843,000

AUTHORITY FOR FISCAL YEAR 1978 AND BUDGET ESTIMATES BILL FOR FISCAL YEAR 1979—Continued

[In dollars]

House allowance	Committee recommendation	Increase (+) or decrease (−) compared with—		
		1978 Appropriation	Budget estimate	House allowance
92,249,000	92,249,000	+10,954,000	−9,809,000	---
8,560,500	8,560,500	+615,000	---	---
---	---	−320,500	---	---
36,729,700	36,729,700	+8,009,000	−6,343,000	---
3,603,500	3,603,500	+418,900	---	---
256,600	256,600	---	---	---
3,860,100	3,860,100	+418,900	---	---
7,694,000	7,694,000	+663,300	−1,761,200	---
149,093,300	149,093,300	+20,139,700	−17,913,200	---
2,776,000	2,776,000	+606,900	−18,700	---
805,000	805,000	+79,000	−130,000	---
11,476,000	11,476,000	−1,476,500	---	---
23,200,000	23,200,000	+1,449,000	---	---
34,676,000	34,676,000	−27,500	---	---
185,756,000	185,756,000	+18,756,000	−2,087,000	---

COMPARATIVE STATEMENT OF NEW BUDGET (OBLIGATIONAL) AND AMOUNTS RECOMMENDED IN THE

[Amounts

Item	1978 Appropriation	Budget estimate
COST-ACCOUNTING STANDARDS BOARD		
Salaries and expenses	1,837,000	1,850,000
Total, title II - related agencies	336,672,200	396,496,800
Grand total, titles I and II: New budget (obligational) authority	1,003,049,500	1,143,824,100
RECAPITULATION		
TITLE I - CONGRESSIONAL OPERATIONS	666,377,300	747,327,300
TITLE II - RELATED AGENCIES	336,672,200	396,496,800
TITLE I - CONGRESSIONAL OPERATIONS		
Senate	166,224,900	185,182,000
House of Representatives	282,672,100	306,049,900
Joint Items	56,903,600	73,773,900
Office of Technology Assessment	7,400,000	10,000,000
Congressional Budget Office	10,400,000	11,368,000
Architect of the Capitol (except library buildings and grounds)	49,307,700	60,613,500
Congressional Research Service, Library of Congress	21,795,000	26,379,000
Congressional printing and binding, Government Printing Office	71,674,000	73,961,000
Total, title I - congressional operations	666,377,300	747,327,300
TITLE II - RELATED AGENCIES		
Botanic Garden	1,283,000	1,391,600
Library of Congress (except Congressional Research Service)	128,953,600	167,006,500
Library buildings and grounds, Architect of the Capitol	2,169,100	2,794,700
Copyright Royalty Tribunal	726,000	935,000
Government Printing Office (except congressional printing and binding)	34,703,500	34,676,000
General Accounting Office	167,000,000	187,843,000
Cost-Accounting Standards Board	1,837,000	1,850,000
Total, title II - related agencies	336,672,200	396,496,800
Grand total, new budget (obligational) authority	1,003,049,500	1,143,824,100

AUTHORITY FOR FISCAL YEAR 1978 AND BUDGET ESTIMATES TILL FOR FISCAL YEAR 1979—Continued

[In dollars]

House allowance	Committee recommendation	Increase (+) or decrease (−) compared with—		
		1978 Appropriation	Budget estimate	House allowance
1,850,000	1,850,000	+13,000	---	---
376,348,300	376,348,300	+39,676,100	-20,148,500	---
922,491,800	1,118,244,400	+115,194,900	-25,579,700	+195,752,600
546,143,500	741,896,100	+75,518,800	-5,431,200	+195,752,600
376,348,300	376,348,300	+39,676,100	-20,148,500	---
---	185,064,000	+18,839,100	-118,000	+185,064,000
306,016,400	306,016,400	+23,344,300	-33,500	---
73,727,100	73,727,100	+16,823,500	-46,800	---
9,700,000	9,700,000	+2,300,000	-300,000	---
11,172,000	11,368,000	+968,000	---	+196,000
46,014,000	56,506,600	+7,198,900	-4,106,900	+10,492,600
25,553,000	25,553,000	+3,758,000	-926,000	---
73,961,000	73,961,000	+3,287,000	---	---
546,143,500	741,896,100	+75,518,800	-5,431,200	+195,752,600
1,392,000	1,392,000	+109,000	+400	---
149,093,300	149,093,300	+20,139,700	-17,913,200	---
2,776,000	2,776,000	+606,900	-18,700	---
805,000	805,000	+79,000	-130,000	---
34,676,000	34,676,000	-27,500	---	---
185,756,000	185,756,000	+18,756,000	-2,687,000	---
1,850,000	1,850,000	+13,000	---	---
376,348,300	376,348,300	+39,676,100	-20,148,500	---
922,491,800	1,118,244,400	+115,194,900	-25,579,700	+195,752,600

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Calendar No. 954

95TH CONGRESS
2d Session

SENATE

REPORT
No. 95–1025

DISTRICT OF COLUMBIA RETIREMENT REFORM ACT

JULY 20 (legislative day, MAY 17), 1978.—Ordered to be printed

Mr. EAGLETON, from the Committee on Governmental Affairs, submitted the following

REPORT

[To accompany H.R. 6536]

The Committee on Governmental Affairs, to which was referred the bill (H.R. 6536) to establish an actuarially sound basis for financing retirement benefits for policemen, firemen, teachers, and judges of the District of Columbia and to make certain changes in such benefits, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of the bill H.R. 6536 is to establish an actuarially sound basis for financing retirement benefits for policemen, firemen, teachers, and judges of the District of Columbia and to make certain changes in such benefits.

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95TH CONGRESS
2d Session

SENATE

REPORT
No. 95-1026

WAIVER OF SECTION 303(a) OF THE CONGRESSIONAL BUDGET ACT WITH RESPECT TO CONSIDERATION OF S. 3085

JULY 20 (legislative day, MAY 17), 1978.—Ordered to be printed

Mr. MUSKIE, from the Committee on the Budget, submitted the following

REPORT

[To accompany S. Res. 522]

The Committee on the Budget, to which was referred the resolution, Senate Resolution 522, waiving section 303(a) of the Congressional Budget and Impoundment Control Act of 1974 with respect to consideration of S. 3085, a bill to extend and amend the special supplemental food program and the child care food program, and for other purposes, reports favorably thereon and recommends that the resolution be adopted.

PURPOSE OF THE RESOLUTION

Section 303(a) of the Congressional Budget Act of 1974 provides that it shall not be in order in either the House or the Senate to consider any bill or resolution or any amendment thereto providing new budget authority, new spending authority, or changes in revenues or public debt for a fiscal year until the first concurrent resolution on the budget for such fiscal year has been adopted. Since S. 3085 provides new spending authority under section 401(c)(2)(C) for the special supplemental food program to become effective in fiscal years 1980, 1981, and 1982, prior to the adoption of the first concurrent resolutions on the budget for such years, a resolution waiving section 303(a) of the Budget Act is necessary before the bill can be taken up on the Senate floor. In reporting favorably on the resolution waiving application of section 303(a) to S. 3085, the Budget Committee is recommending that the Senate proceed to full consideration of the bill, but is not prejudging the merits of the bill.

COMMITTEE CRITERIA

The Budget Committee is extremely reluctant to recommend the adoption of resolutions waiving section 303(a) of the Budget Act. One

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Calendar No. 954

95TH CONGRESS
2d Session

SENATE

REPORT
No. 95–1025

DISTRICT OF COLUMBIA RETIREMENT REFORM ACT

JULY 20 (legislative day, MAY 17), 1978.—Ordered to be printed

Mr. EAGLETON, from the Committee on Governmental Affairs, submitted the following

REPORT

[To accompany H.R. 6536]

The Committee on Governmental Affairs, to which was referred the bill (H.R. 6536) to establish an actuarially sound basis for financing retirement benefits for policemen, firemen, teachers, and judges of the District of Columbia and to make certain changes in such benefits, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of the bill H.R. 6536 is to establish an actuarially sound basis for financing retirement benefits for policemen, firemen, teachers, and judges of the District of Columbia and to make certain changes in such benefits.

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95TH CONGRESS
2d Session
SENATE
REPORT
No. 95-1026

WAIVER OF SECTION 303(a) OF THE CONGRESSIONAL BUDGET ACT WITH RESPECT TO CONSIDERATION OF S. 3085

JULY 20 (legislative day, MAY 17), 1978.—Ordered to be printed

Mr. MUSKIE, from the Committee on the Budget, submitted the following

REPORT

[To accompany S. Res. 522]

The Committee on the Budget, to which was referred the resolution, Senate Resolution 522, waiving section 303(a) of the Congressional Budget and Impoundment Control Act of 1974 with respect to consideration of S. 3085, a bill to extend and amend the special supplemental food program and the child care food program, and for other purposes, reports favorably thereon and recommends that the resolution be adopted.

PURPOSE OF THE RESOLUTION

Section 303(a) of the Congressional Budget Act of 1974 provides that it shall not be in order in either the House or the Senate to consider any bill or resolution or any amendment thereto providing new budget authority, new spending authority, or changes in revenues or public debt for a fiscal year until the first concurrent resolution on the budget for such fiscal year has been adopted. Since S. 3085 provides new spending authority under section 401(c)(2)(C) for the special supplemental food program to become effective in fiscal years 1980, 1981, and 1982, prior to the adoption of the first concurrent resolutions on the budget for such years, a resolution waiving section 303(a) of the Budget Act is necessary before the bill can be taken up on the Senate floor. In reporting favorably on the resolution waiving application of section 303(a) to S. 3085, the Budget Committee is recommending that the Senate proceed to full consideration of the bill, but is not prejudging the merits of the bill.

COMMITTEE CRITERIA

The Budget Committee is extremely reluctant to recommend the adoption of resolutions waiving section 303(a) of the Budget Act. One

of the major purposes of the Congressional Budget Act was to bring the Federal budget under better control. Through the adoption of the first and second concurrent resolutions on the budget, Congress sets fiscal policy and national priorities for the fiscal year.

If legislation affecting spending or revenues for a future fiscal year is considered prior to the adoption of the first concurrent resolution on the budget for that year, to that extent Congress loses control of the spending and priority decisions for that year prior to adoption of a congressional budget for that year. However, the Budget Act recognized that in some situations it may be appropriate to consider such legislation before the adoption of the first concurrent resolution.

COMMITTEE RECOMMENDATION

The Budget Committee has concluded that it is appropriate to waive section 303(a) in the case of S. 3085. The program has been credited with considerable success in improving the health of low-income women, infants, and children who have been found to be at nutritional risk, and some expansion of the WIC program seems justified.

The Appropriations Committee has reported an amendment to reduce the fiscal year 1979 funding levels and convert the WIC program to an authorization in fiscal year 1981. Thus, if this amendment passes, S. 3085 would provide for new entitlement authority in only 1 year (fiscal year 1980) for which no budget resolution is in place.

In its report, the Appropriations Committee states that it will stay within its crosswalk for all child nutrition programs for fiscal year 1979. The Budget Committee hopes that this intention will continue over the life of the program and that the Appropriations Committee will be mindful of the 5-year mission and function totals in the exercise of their appropriating authority.

Under these circumstances the committee believes that Senate consideration of S. 3085 is not so inconsistent with the congressional budget process as to be inappropriate and recommends that the resolution be adopted. The committee, in recommending the adoption of the resolution, does not necessarily endorse the bill or its funding levels.

ADDITIONAL VIEWS OF SENATOR HENRY BELLMON

One of the difficulties in controlling Federal spending is the fact that a large part of today's resources have been previously committed. Entitlement programs are a major part of this problem.

During consideration of S. 3085 in the Agriculture, Nutrition, and Forestry Committee, I raised concerns about the entitlement nature of the WIC program. I am pleased that the Appropriations Committee has recommended terminating the entitlement feature and converting it to an authorization for appropriations at the end of fiscal year 1980.

Given the history of uncertainty in the funding for the WIC program, and given the urgent nutrition problems it addresses, I have concluded that continuing the entitlement feature during fiscal years 1979 and 1980 reflects an acceptable balance of all the competing considerations.

A second concern I wish to register has to do with the potential future costs this legislation could entail. S. 3085, if fully funded in future years, would significantly exceed the ceilings included in the Budget Committee's report on the first concurrent resolution for fiscal year 1979. The House companion bill provides even higher authorizations. I call on my colleagues to exercise restraint during the upcoming conference with the House, in the appropriations process, and in our ongoing oversight work to keep the growth in costs within bounds and to assure that the money we make available is well spent.

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95TH CONGRESS
2d Session
SENATE
REPORT
No. 95-1027

WAIVER OF SECTION 402(a) OF THE CONGRESSIONAL BUDGET ACT WITH RESPECT TO CONSIDERATION OF S. 3153

JULY 20 (legislative day, MAY 17), 1978.—Ordered to be printed

Mr. MUSKIE, from the Committee on the Budget, submitted the following

REPORT

[To accompany S. Res. 508]

The Committee on the Budget, to which was referred the resolution, Senate Resolution 508, waiving section 402(a) of the Congressional Budget and Impoundment Control Act of 1974 with respect to consideration of S. 3153, a bill to settle Indian land claims within the State of Rhode Island and Providence Plantations, and for other purposes, reports favorably thereon and recommends that the resolution be adopted.

PURPOSE OF THE RESOLUTION

Section 402(a) of the Congressional Budget Act of 1974 provides that it shall not be in order in either the House or the Senate to consider any bill or resolution which directly or indirectly authorizes the enactment of new budget authority for a fiscal year unless that bill or resolution is reported in the House or Senate, as the case may be, on or before May 15 preceding the beginning of such fiscal year. Because S. 3153 authorizes the enactment of new budget authority for fiscal year 1978 and was reported by the committee on July 11, 1978—after the May 15, 1977 deadline for fiscal year 1978 authorization bills—a resolution waiving section 402(a) of the Budget Act with respect to S. 3153 must be adopted before this bill can be considered by the Senate. In reporting favorably on the resolution, the Budget Committee is not prejudging the merits of this bill.

COMMITTEE CRITERIA

The Budget Committee is extremely reluctant to recommend the adoption of resolutions waiving section 402(a) of the Budget Act. This section was included in the Budget Act to insure that all authorizing legislation is considered as far as possible in advance of the fiscal year in which it will take effect so that it could be considered in the formulation of the First Concurrent Resolution. In addition, this section was

included to provide the Appropriations Committee with some reasonable notice of needed appropriations for the coming fiscal year so that the Appropriations Committee can meet the appropriations timetable spelled out in the Budget Act.

Legislation authorizing the enactment of new budget authority which is reported to the Senate after May 15 could delay the enactment of appropriations bills past the Budget Act deadline of 7 days after Labor Day for the completion of the entire appropriations process. The legislative history of the Budget Act indicates that the May 15 reporting deadline is not to be lightly waived. Under these circumstances, the Budget Committee, in deciding whether to favorably report resolution waiving section 402(a) of the Budget Act, will consider factors including: the reporting committee's effort to meet the May 15 deadline, the delay in the appropriations process engendered by the late reporting of the authorization, and whether the enactment of the authorization will significantly affect the national priorities established in the congressional budget.

BUDGET CONSIDERATIONS

As reported, S. 3153 authorizes $3.5 million in fiscal year 1978 for the Federal Government to purchase 900 acres of land to be transferred to an Indian-controlled corporation as part of an agreement to settle pending land claims of Narragansett Indians. Because S. 3153 authorizes appropriations for fiscal year 1978, and was not reported on or before May 15, 1977, it cannot be considered in the full Senate unless a resolution waiving section 402(a) of the Budget Act is adopted.

According to the Select Committee on Indian Affairs, the effect of defeating consideration of the authorization in S. 3153 would be to prevent the implementation of the agreement settling the land claims; the Narragansett Indian suit would continue in the courts; and the titles to land in Charlestown, R.I., would be clouded at least until the conclusion of the case.

In reporting favorably on Senate Resolution 508, the Budget Committee notes that the Select Committee on Indian Affairs could not have met the May 15, 1977 reporting deadline since the case was not settled until February 18, 1978.

Funding for S. 3153 could be accommodated within the Second Budget Resolution targets for fiscal year 1978.

To permit orderly consideration of S. 3153, the Budget Committee reports favorably on Senate Resolution 508, and recommends that the resolution be adopted.

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95TH CONGRESS
2d Session

SENATE

REPORT
No. 95-1028

AUTHORIZING APPROPRIATIONS FOR FISCAL YEAR 1979 FOR INTELLIGENCE ACTIVITIES OF THE U.S. GOVERNMENT, THE INTELLIGENCE COMMUNITY STAFF, THE CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM (CIARDS), AND FOR OTHER PURPOSES

JULY 20 (legislative day, MAY 17), 1978.—Ordered to be printed

Mr. BYRD of Virginia (for Mr. Stennis), from the Committee on Armed Services, submitted the following

REPORT

[To accompany S. 2939]

The Committee on Armed Services to which was referred the bill (S. 2939) to authorize appropriations during fiscal year 1979 for U.S. intelligence activities, the intelligence community staff, the CIA retirement and disability system and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

COMMITTEE AMENDMENTS

(1) On page 2, after the period in line 23, insert a new sentence as follows:

> The Committee on Armed Services of the Senate shall prepare a separate classified report containing its funding and program recommendations on specific Department of Defense and Department of Energy intelligence programs considered by the Committee on Armed Services pursuant to a referral made to such committee under section 3(b) of Senate Resolution 400 of the Ninety Fourth Congress.

(2) On page 2, line 23, strike out "report" and insert in lieu thereof "reports".

COMMITTEE CONSIDERATION

Senate Resolution 400 of the 94th Congress, which created the Senate Select Committee on Intelligence, conferred on that new committee exclusive legislative and authorizing jurisdiction over the Central Intelligence Agency and the Director of Central Intelligence. The resolution further provided that the new select committee was to have

concurrent legislative and authorizing jurisdiction over the intelligence activities of certain other departments and agencies of the Government. Thus, section 3(b) of Senate Resolution 400 provided a parliamentary mechanism to permit a committee under whose jurisdiction such activities would otherwise fall to obtain sequential referral of the select committee's bill for further consideration. The committee feels that this sequential referral process is an essential one, since the knowledge and oversight experience of the standing committee which deals with a particular department is essential in assuring that the best possible legislation is reported to the Senate.

Since S. 2939 authorizes funds for the intelligence activities of the Department of Defense, including the defense agencies and the military services, the committee requested sequential referral of the bill for the purpose of reviewing the recommendations of the select committee with respect to Department of Defense intelligence programs. The committee has considered only the parts of title I dealing with the Department of Defense or the Department of Energy, and has not considered titles II and III of the bill dealing with the intelligence community staff and the CIA retirement system.

Drawing on its long experience in overseeing all activities of the Defense Department, including intelligence, the committee carefully considered both the budget request and the actions of the select committee as reflected in its classified report. Major individual programs for which funds are authorized in S. 2939 had been covered in hearings held by the Tactical Air or Research and Development Subcommittees of the Armed Services Committee in connection with the Department of Defense authorization bill for fiscal year 1979. For this year, the Armed Services Committee and the Intelligence Committee are in agreement on recommendations for all funds to be authorized. The Armed Services Committee report recommendations differ in only three areas from those of the Intelligence Committee. These are described in the classified annex to this report.

COMMITTEE JURISDICTION

In addition to defining the areas in which the new Select Committee on Intelligence exercises legislative and authorizing jurisdiction, Senate Resolution 400 sets clear limits on that jurisdiction as regards intelligence functions and programs which serve the military commanders. This limitation reflects the main concerns of the Senate in creating the select committee—to establish closer expert oversight over broad national intelligence activities. Consequently, section 14(a) of the resolution states explicitly that "intelligence activities," the term used throughout to describe those activities within the select committee's jurisdiction, "does not include tactical foreign military intelligence serving no national policymaking function." The purpose of this provision was to preserve jurisdiction in the Armed Services Committee over those programs and systems that are a part of the tactical intelligence system. Senator Ribicoff, the floor manager of Senate Resolution 400, made it clear, during floor consideration of the resolution, what was intended with regard to tactical intelligence:

> The substitute does not give the new committee any legislative, authorization, or oversight responsibility for tactical

intelligence. Responsibility for this type of intelligence will remain solely within the jurisdiction of the Armed Services Committee. The new committee will only have jurisdiction over that portion of DOD's intelligence activities which provides national intelligence that DOD, the State Department, the President, and others in the executive branch need to make broad national policy decisions. The definition of intelligence in section 14(a) of the substitute to Senate Resolution 400 specifically excludes from the committee's jurisdiction tactical foreign military intelligence. The new committee will not have jurisdiction over tactical intelligence which seeks to meet the more specific technical interests of the weapons developers and field commanders.

In order to make more visible those programs which relate to tactical or battlefield intelligence, a loose collection of military programs called "intelligence related activities" (IRA) was created in the defense budget. These programs include the funds for research, procurement and operation of military equipment for military field commanders and are primarily tactical in orientation. Nonetheless, some confusion has arisen over the respective roles of the two committees in authorizing funds for these programs and providing program guidance to the department involved. The committee feels strongly that it has exclusive jurisdiction to authorize appropriations for intelligence related activities. It welcomes the recommendations of the select committee, and will consider, as it has for the last 2 years, including in its report on the Department of Defense authorization bill recommended funding changes and related report language that the select committee may adopt as part of its continuing oversight of the Nation's intelligence community. The two committees worked closely together during the current authorization cycle, arriving at common recommendations for funding of IRA items. However, in order to avoid innumerable specific disagreements in the future about the nature of each program, the committee feels that the IRA category provides a useful, albeit imperfect, rule-of-thumb method of defining those "tactical" programs for which exclusive jurisdiction remains with the Armed Services Committee. While the unclassified bill (S. 2939) itself does not purport to authorize programs in the intelligence related activities category, the classified report of the Select Committee on Intelligence indicates that the select committee may intend to authorize a single IRA program that it considers to have implications for national intelligence—TENCAP. This authorization is unnecessary, since the committees agree on the funding for this program and such amounts are included in the regular Department of Defense authorization bill already passed by the Senate.

A further problem regarding the division of jurisdiction between the two committees concerns authorization of intelligence activities of the Department of Energy. Senate Resolution 400 gives oversight jurisdiction to the Select Committee on Intelligence over intelligence activities of all departments of Government. However, Senate Resolution 400 specifies a different and narrower authorizing jurisdiction for the Intelligence Committee, and lists the intelligence activities of certain specific departments, not including the predecessor agencies of the

Department of Energy. The intelligence activities of the Department of Energy was included in the Department of Energy military programs bill previously reported by the Armed Services Committee.

In order to simplify and clarify procedures for annual authorization of appropriations for intelligence items of interest to both committees, and Armed Services Committee summarizes the relationship between the two committees as follows:

Under Senate Resolution 400 the authorizing jurisdiction for the Central Intelligence Agency (CIA) and the Director of Central Intelligence (DCI) resides solely with the Intelligence Committee. The Intelligence Committee and the Armed Services Committee each have concurrent authorizing jurisdiction over intelligence activities of the Department of Defense which serve a national policymaking function. Authorizing jurisdiction for tactical military intelligence resides solely with the Armed Services Committee.

Any Defense Department Intelligence activity whose principal purpose is to serve the national policymaking function should be considered and authorized as part of the so-called national foreign intelligence program and thus is in the area of concurrent committee jurisdiction. Any other intelligence activity or program of the Department of Defense whose principal purpose is to serve a tactical military function should be considered and authorized as part of the regular Department of Defense military program. For purposes of defining the authorizing jurisdiction between the two committees, the budget category called "intelligence related activities" should be considered to be "tactical intelligence" as defined by Senate Resolution 400.

The Armed Services Committee should incorporate without change the recommendations of the Intelligence Committee on those CIA/DCI items that may be included in the regular military authorization bill. If, as a result of its oversight activities or program review, the Armed Services Committee has suggestions regarding the authorization of CIA/DCI items it should make such suggestions and recommendations to the Intelligence Committee not later than April 15. The Intelligence Committee should give full and careful consideration to such recommendations, including reference in the committee report, in making authorization recommendations to the Senate as part of the annual intelligence authorization process.

If, as a result of its oversight activities or program review, the Intelligence Committee has suggestions regarding the authorization of Department of Defense intelligence related activities or Department of Energy intelligence activities, it should make such suggestions and recommendations to the Armed Services Committee not later than April 15. The Armed Services Committee should give full and careful consideration to such recommendations, including reference in the committee report, in making authorization recommendations to the Senate as part of the annual Department of Defense and Department of Energy military authorization processes.

AMENDMENTS

The committee amendments relate to section 101(B), and provides the Armed Services Committee report with the same status as the

report of the Intelligence Committee. It is intended to make it clear that the two committees will make available separate reports covering such program guidance as may be within their respective or shared jurisdictions. The committee recommends that a similar system be followed whenever two or more committees consider the bill sequentially in the future.

PROGRAM RECOMMENDATIONS

The committee has also prepared a classified annex to this report, which contains comments on the substance of intelligence activities of the Department of Defense and intelligence related activities. The Armed Services Committee concurs with all funding recommendations of the Intelligence Committee in general with the careful and comprehensive comments on intelligence programs contained in the select committee's classified report, which reflects their excellent oversight program. The Armed Services Committee's recommendations, insofar as they relate to intelligence activities as defined by Senate Resolution 400, shall be followed by the agency concerned along with the recommendations of the select committee. Where the programs involved fall into the category of intelligence related activities, however, it is recommended that the Department of Defense follow the guidance language of the Armed Services Committee, since these programs are within the exclusive authorizing jurisdiction of the committee. The committee finds the program recommendations made to it by the select committee in this area most helpful.

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95TH CONGRESS
2d Session

SENATE

REPORT
No. 95–1029

WAIVER OF SECTION 402(a) OF THE CONGRESSIONAL BUDGET ACT WITH RESPECT TO CONSIDERATION OF S. 3243

JULY 21 (legislative day, MAY 17), 1978.—Ordered to be printed

Mr. MUSKIE, from the Committee on the Budget, submitted the following

REPORT

[To accompany S. Res. 494]

The Committee on the Budget, to which was referred the resolution, Senate Resolution 494, waiving section 402(a) of the Congressional Budget and Impoundment Control Act of 1974 with respect to consideration of S. 3243, a bill authorizing additional funds for administrative expenses of the local public works program, reports favorably thereon and recommends that the resolution be adopted.

PURPOSE OF THE RESOLUTION

Section 402(a) of the Congressional Budget Act of 1974 provides that it shall not be in order in either the House or the Senate to consider any bill or resolution which directly or indirectly authorizes the enactment of new budget authority for a fiscal year unless that bill or resolution is reported in the House or Senate, as the case may be, on or before May 15 preceding the beginning of such fiscal year. Because S. 3243 authorizes enactment of new budget authority for fiscal years 1978 and 1979 and was reported by the committee on June 26, 1978, a resolution waiving section 402(a) of the Budget Act with respect to S. 3243 must be adopted before this bill can be considered by the Senate. In reporting favorably on the resolution, the Budget Committee is not prejudging the merits of the bill.

COMMITTEE CRITERIA

The Budget Committee is extremely reluctant to recommend the adoption of resolutions waiving section 402(a) of the Budget Act. This section was included in the Budget Act to insure that all authorizing legislation is considered as far as possible in advance of the fiscal year in which it will take effect so that it could be considered in the formulation of the first concurrent resolution. In addition, this

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95TH CONGRESS
2d Session

SENATE

REPORT
No. 95-1029

WAIVER OF SECTION 402(a) OF THE CONGRESSIONAL BUDGET ACT WITH RESPECT TO CONSIDERATION OF S. 3243

JULY 21 (legislative day, MAY 17), 1978.—Ordered to be printed

Mr. MUSKIE, from the Committee on the Budget, submitted the following

REPORT

[To accompany S. Res. 494]

The Committee on the Budget, to which was referred the resolution, Senate Resolution 494, waiving section 402(a) of the Congressional Budget and Impoundment Control Act of 1974 with respect to consideration of S. 3243, a bill authorizing additional funds for administrative expenses of the local public works program, reports favorably thereon and recommends that the resolution be adopted.

PURPOSE OF THE RESOLUTION

Section 402(a) of the Congressional Budget Act of 1974 provides that it shall not be in order in either the House or the Senate to consider any bill or resolution which directly or indirectly authorizes the enactment of new budget authority for a fiscal year unless that bill or resolution is reported in the House or Senate, as the case may be, on or before May 15 preceding the beginning of such fiscal year. Because S. 3243 authorizes enactment of new budget authority for fiscal years 1978 and 1979 and was reported by the committee on June 26, 1978, a resolution waiving section 402(a) of the Budget Act with respect to S. 3243 must be adopted before this bill can be considered by the Senate. In reporting favorably on the resolution, the Budget Committee is not prejudging the merits of the bill.

COMMITTEE CRITERIA

The Budget Committee is extremely reluctant to recommend the adoption of resolutions waiving section 402(a) of the Budget Act. This section was included in the Budget Act to insure that all authorizing legislation is considered as far as possible in advance of the fiscal year in which it will take effect so that it could be considered in the formulation of the first concurrent resolution. In addition, this

section was included to provide the Appropriations Committee with some reasonable notice of needed appropriations for the coming fiscal year so that the Appropriations Committee can meet the appropriations timetable spelled out in the Budget Act.

Legislation authorizing the enactment of new budget authority which is reported to the Senate after May 15 could delay the enactment of appropriations bills past the Budget Act deadline of 7 days after Labor Day for the completion of the entire appropriations process. The legislative history of the Budget Act indicates that the May 15 reporting deadline is not to be lightly waived. Under these circumstances, the Budget Committee, in deciding whether to favorably report resolutions waiving section 402(a) of the Budget Act, will consider factors including: the reporting committee's effort to meet the May 15 deadline, the delay in the appropriations process engendered by the late reporting of the authorization, and whether the enactment of the authorization will significantly affect the national priorities established in the congressional budget.

BUDGET CONSIDERATIONS

As reported, S. 3243 authorizes the appropriation of $14 million in budget authority to cover the expenses of administering and evaluating the local public works program for the remainder of fiscal year 1978 and for fiscal year 1979. Because S. 3243 authorizes appropriations for fiscal years 1978 and 1979 and was not reported before or on the appropriate May 15 deadlines, it cannot be considered in the full Senate unless a resolution waiving section 402(a) of the Budget Act is adopted.

According to the Committee on Environment and Public Works, the effect of defeating consideration of the authorization in S. 3243 would be to make it necessary to release all local public works monitoring and evaluation employees, and to cease all operations other than processing letter-of-credit drawdowns.

In reporting favorably on Senate Resolution 494, the Budget Committee notes that the Committee on Environment and Public Works reported the bulk of its legislation on time.

Funding for S. 3243 could be accommodated within the second budget resolution targets for fiscal year 1978, and the first budget resolution targets for fiscal year 1979.

To permit orderly consideration of S. 3243, the Budget Committee reports favorably on Senate Resolution 494, and recommends that the resolution be adopted.

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95TH CONGRESS
2d Session

SENATE

REPORT
No. 95-1030

WAIVER OF SECTION 402(a) OF THE CONGRESSIONAL BUDGET ACT WITH RESPECT TO CONSIDERATION OF S. 2693

JULY 21 (legislative day, MAY 17), 1978.—Ordered to be printed

Mr. MUSKIE, from the Committee on the Budget, submitted the following

REPORT

[To accompany S. Res. 498]

The Committee on the Budget, to which was referred the resolution, Senate Resolution 498, waiving section 402(a) of the Congressional Budget and Impoundment Control Act of 1974 with respect to consideration of S. 2693, the Department of Energy military applications bill, reports favorably thereon and recommends that the resolution be adopted.

PURPOSE OF THE RESOLUTION

Section 402(a) of the Congressional Budget Act of 1974 provides that it shall not be in order in either the House or the Senate to consider any bill or resolution which directly or indirectly authorizes the enactment of new budget authority for a fiscal year unless that bill or resolution is reported in the House or Senate, as the case may be, on or before May 15 preceding the beginning of such fiscal year. Because S. 2693 authorizes the enactment of new budget authority for fiscal year 1979 and was reported by the committee on June 28, 1978, a resolution waiving section 402(a) of the Budget Act with respect to S. 2693 must be adopted before this bill can be considered by the Senate. In reporting favorably on the resolution, the Budget Committee is not prejudging the merits of this bill.

COMMITTEE CRITERIA

The Budget Committee is extremely reluctant to recommend the adoption of resolutions waiving section 402(a) of the Budget Act. This section was included in the Budget Act to insure that all authorizing legislation is considered as far as possible in advance of the fiscal year in which it will take effect so that it could be considered in the formulation of the first concurrent resolution. In addition, this section was

included to provide the Appropriations Committee with some reasonable notice of needed appropriations for the coming fiscal year so that the Appropriations Committee can meet the appropriations timetable spelled out in the Budget Act.

Legislation authorizing the enactment of new budget authority which is reported to the Senate after May 15 could delay the enactment of appropriations bills past the Budget Act deadline of 7 days after Labor Day for the completion of the entire appropriations process. The legislative history of the Budget Act indicates that the May 15 reporting deadline is not to be lightly waived. Under these circumstances, the Budget Committee, in deciding whether to favorably report resolutions waiving section 402(a) of the Budget Act, will consider factors including: The reporting committee's effort to meet the May 15 deadline, the delay in the appropriations process engendered by the late reporting of the authorization, and whether the enactment of the authorization will significantly affect the national priorities established in the congressional budget.

BUDGET CONSIDERATIONS

As reported by the Armed Services Committee, S. 2693 authorizes appropriations for weapons acquisitions, operating expenses, construction and capital equipment for national defense programs of the Department of Energy for fiscal year 1979. Because S. 2693 authorizes appropriations for fiscal year 1979, and was not reported on or before May 15, 1978, it cannot be considered in the full Senate unless a resolution waiving section 402(a) of the Budget Act is adopted.

According to the Armed Services Committee, the effect of defeating consideration of the authorization in S. 2693 would be to preclude new funding authorizations for the initiation and/or continuation of nuclear weapons acquisition programs, testing activities, and plant and capital equipment associated with national security programs of the Department of Energy.

In reporting favorably on Senate Resolution 498, the Budget Committee notes that the Armed Services Committee reported three of its five major pieces of legislation by the reporting deadline. The major reason why the committee did not meet the May 15 reporting deadline for S. 2693 was the necessity to hold a special hearing on the neutron bomb or enhanced radiation warhead program. The hearing could not be scheduled prior to May 15.

Funding for S. 2693 could be accomplished within the first budget resolution targets for fiscal year 1979.

To permit orderly consideration of S. 2693, the Budget Committee reports favorably on Senate Resolution 498, and recommends that the resolution be adopted.

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95TH CONGRESS
2d Session
SENATE
REPORT
No. 95-1031

WAIVER OF SECTION 402(a) OF THE CONGRESSIONAL BUDGET ACT WITH RESPECT TO CONSIDERATION OF S. 1487

JULY 21 (legislative day, MAY 17), 1978.—Ordered to be printed

Mr. MUSKIE, from the Committee on the Budget, submitted the following

REPORT

[To accompany S. Res. 499]

The Committee on the Budget, to which was referred the resolution, Senate Resolution 499, waiving section 402(a) of the Congressional Budget and Impoundment Control Act of 1974 with respect to consideration of S. 1487, a bill to eliminate racketeering in the sale and distribution of cigarettes, and for other purposes, reports favorably thereon and recommends that the resolution be adopted.

PURPOSE OF THE RESOLUTION

Section 402(a) of the Congressional Budget Act of 1974 provides that it shall not be in order in either the House or the Senate to consider any bill or resolution which directly or indirectly authorizes the enactment of new budget authority for a fiscal year unless that bill or resolution is reported in the House or Senate, as the case may be, on or before May 15 preceding the beginning of such fiscal year. Because S. 1487 authorizes enactment of new budget authority which would be available in fiscal year 1979, and was not reported by May 15, 1978, a resolution waiving section 402(a) of the Budget Act for S. 1487 must be adopted before the Senate may consider the bill.

COMMITTEE CRITERIA

The Budget Committee is extremely reluctant to recomemnd the adoption of resolutions waiving section 402(a) of the Budget Act. This section was included in the Budget Act to insure that all authorizing legislation is considered as far as possible in advance of the fiscal year in which it will take effect so that it could be considered in the formulation of the first concurrent resolution. In addition, this section was included to provide the Appropriations Committee with

some reasonable notice of needed appropriations for the coming fiscal year so that the Appropriations Committee can meet the appropriations timetable spelled out in the Budget Act.

Legislation authorizing the enactment of new budget authority which is reported to the Senate after May 15 could delay the enactment of appropriations bills past the Budget Act deadline of 7 days after Labor Day for the completion of the entire appropriations process. The legislative history of the Budget Act indicates that the May 15 reporting deadline is not to be lightly waived. Under these circumstances, the Budget Committee, in deciding whether to favorably report resolutions waiving section 402(a) of the Budget Act, will consider factors including: The reporting committee's effort to meet the May 15 deadline, the delay in the appropriations process engendered by the late reporting of the authorization, and whether the enactment of the authorization will significantly affect the national priorities established in the Congressional budget.

BUDGET CONSIDERATIONS

S. 1487 authorizes appropriation of "such sums as may be necessary" to carry out a Federal program to eliminate cigarette racketeering, and would cost about $3 million per year but would yield States almost $400 million in lost revenues due to cigarette racketeering.

If S. 1487 is not enacted, the Federal role in the prevention of cigarette smuggling will continue to be limited to that authorized by the Jenkins Act (15 U.S.C. 375 et seq.), which applies primarily to distributors who send cigarettes through the mails to customers in other States, and has limited usefulness in attacking "over-the-road" bootlegging, a source of substantial losses in State cigarette tax revenues.

Favorable action on this waiver will enhance Federal anticrime efforts at minimal costs and would yield fiscal relief to States which now suffer revenue losses due to cigarette bootlegging. These factors outweigh the failure to report the bill by May 15.

To permit orderly consideration of S. 1487, the Budget Committee reports favorably on Senate Resolution 499, and recommends its adoption.

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95TH CONGRESS
2d Session

SENATE

REPORT
No. 95-1032

WAIVER OF SECTION 402(a) OF THE CONGRESSIONAL BUDGET ACT WITH RESPECT TO CONSIDERATION OF S. 551

JULY 21 (legislative day, MAY 17), 1978.—Ordered to be printed

Mr. MUSKIE, from the Committee on the Budget, submitted the following

REPORT

[To accompany S. Res. 500]

The Committee on the Budget, to which was referred the resolution, Senate Resolution 500, waiving section 402(a) of the Congressional Budget and Impoundment Control Act of 1974 with respect to consideration of S. 551, a bill to provide for grants to States for the payment of compensation to injured by certain criminal offenses, and for other purposes, reports the resolution to the Senate without recommendation.

PURPOSE OF THE RESOLUTION

Section 402(a) of the Congressional Budget Act of 1974 provides that it shall not be in order in either the House or the Senate to consider any bill or resolution which directly or indirectly authorizes the enactment of new budget authority for the fiscal year unless that bill or resolution is reported in the House or Senate, as the case may be, on or before May 15 preceding the beginning of such fiscal year. Because S. 551 authorizes enactment of new budget authority for fiscal year 1979, and the bill was not reported by May 15, 1978, a resolution waiving application of section 402(a) of the Budget Act to S. 551 must be adopted before the Senate may consider the bill.

COMMITTEE CRITERIA

The Budget Committee is extremely reluctant to recommend the adoption of resolutions waiving section 402(a) of the Budget Act. This section was included in the Budget Act to insure that all authorizing legislation is considered as far as possible in advance of the fiscal year in which it will take effect so that it could be considered in the formulation of the first concurrent resolution. In addition, this section was included to provide the Appropriations Committee with some

reasonable notice of needed appropriations for the coming fiscal year so that the Appropriations Committee can meet the appropriations timetable spelled out in the Budget Act.

Legislation authorizing the enactment of new budget authority which is reported to the Senate after May 15 could delay the enactment of appropriations bills past the Budget Act deadline of 7 days after Labor Day for the completion of the entire appropriations process. The legislative history of the Budget Act indicates that the May 15 reporting deadline is not to be lightly waived. Under these circumstances, the Budget Committee, in deciding whether to favorably report resolutions waiving section 402(a) of the Budget Act, will consider factors including: The reporting committee's effort to meet the May 15 deadline, the delay in the appropriations process engendered by the late reporting of the authorization, and whether the enactment of the authorization will significantly affect the national priorities established in the congressional budget.

BUDGET CONSIDERATIONS

S. 551 authorizes the appropriation of $40 million for fiscal year 1979, $50 million for fiscal year 1980, and $60 million for fiscal year 1981, for grants to States with federally approved programs of certain criminal offenses. These grants would equal 25 percent of compensation for a "qualifying crime;" that is, any act or omission criminally punishable under a State statute which has been designated by the State for compensation, and 100 percent of compensation for any act or omission that would be a "qualifying crime" except that it is subject to exclusive Federal jurisdiction.

The costs of the bill fall within function 750 (administration of justice), mission 1 (Federal law enforcement activities).

The committee understands that the Judiciary Committee will offer a floor amendment to S. 551 to change the effective date of the bill to October 1, 1979. Such action would eliminate the provision of the bill which necessitates waiver of section 402(a) of the Budget Act.

On that basis, the Budget Committee reports Senate Resolution 500 to the Senate without recommendation.

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95TH CONGRESS
2d Session

SENATE

REPORT
No. 95–1033

WAIVER OF SECTION 402(a) OF THE CONGRESSIONAL BUDGET ACT WITH RESPECT TO CONSIDERATION OF S. 2692

JULY 21 (legislative day, MAY 17), 1978.—Ordered to be printed

Mr. MUSKIE, from the Committee on the Budget, submitted the following

REPORT

[To accompany S. Res. 505]

The Committee on the Budget, to which was referred the resolution, Senate Resolution 505, waiving section 402(a) of the Congressional Budget and Impoundment Control Act of 1974 with respect to consideration of S. 2692, the Department of Energy Civilian Program Authorization Act for fiscal year 1979, which authorizes appropriations for fiscal year 1979 for the civilian programs of the Department of Energy, reports favorably thereon and recommends that the resolution be adopted.

PURPOSE OF THE RESOLUTION

Section 402(a) of the Congressional Budget Act of 1974 provides that it shall not be in order in either the House or the Senate to consider any bill or resolution which directly or indirectly authorizes the enactment of new budget authority for a fiscal year unless that bill or resolution is reported in the House or Senate, as the case may be, on or before May 15 preceding the beginning of such fiscal year. Because S. 2692 authorizes enactment of new budget authority which would be available in fiscal year 1979, and the bill was reported after May 15, 1978, a resolution waiving application of section 402(a) of the Budget Act to S. 2692 must be adopted before the Senate may consider the bill.

COMMITTEE CRITERIA

The Budget Committee is extremely reluctant to recommend the adoption of resolutions waiving section 402(a) of the Budget Act. This section was included in the Budget Act to insure that all authorizing legislation is considered as far as possible in advance of the fiscal year in which it will take effect so that it could be considered in the formulation of the first concurrent resolution. In addition, this section was included to provide the Appropriations Committee with some

reasonable notice of needed appropriations for the coming fiscal year so that the Appropriations Committee can meet the appropriations timetable spelled out in the Budget Act.

Legislation authorizing the enactment of new budget authority which is reported to the Senate after May 15 could delay the enactment of appropriations bills past the Budget Act deadline of 7 days after Labor Day for the completion of the entire appropriations process. The legislative history of the Budget Act indicates that the May 15 reporting deadine is not to be lightly waived. Under these circumstances, the Budget Committee, in deciding whether to favorably report resolutions waiving section 402(a) of the Budget Act, will consider factors including: The reporting committee's effort to meet the May 15 deadline, the delay in the appropriations process engendered by the late reporting of the authorization, and whether the enactment of the authorization will significantly affect the national priorities established in the congressional budget.

BUDGET CONISIDERATIONS

S. 2692 provides a net authorization of $10.3 billion in new budget authority, of which $0.7 billion is classified in function 250 (science, space, and technology) and $9.6 billion is function 270 (energy).

Failure to consider S. 2692 would force the Appropriations Committee to consider funding most energy programs without the guidance offered by the authorizing legislation, and certain new programs in S. 2692 would probably not be funded. Given the urgency of the Nation's energy problems, the Appropriations Committee would likely have to provide funds for the Department without an authorization bill.

According to the Energy Committee, it could not meet the May 15 reporting deadline for S. 2692 because work on the bill, which took 19 days of hearings and 15 markup sessions, was hindered by the large number of matters under consideration by the committee, rumors of supplementary executive branch energy supply initiatives, and protracted negotiations on the National Energy Act in conference. In addition, two of the three House committees with jurisdiction over the two comparable House authorization bills also missed the May 15 deadline.

Because failure to consider S. 2692 would exacerbate current congressional problems in setting a national energy policy, the Budget Committee reports favorably on Senate Resolution 505 and recommends that it be adopted.

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95TH CONGRESS
2d Session

SENATE

REPORT
No. 95-1034

NATIONAL HISTORIC TRAILS

JULY 21 (legislative day, MAY 17), 1978.—Ordered to be printed

Mr. CHURCH, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany H.R. 6900]

The Committee on Energy and Natural Resources, to which was referred the act (H.R. 6900) to amend the National Trails System Act of 1968 (82 Stat. 919), as amended, to designate the Oregon National Historic Trail and Travelway as a unit of the National Trails System, having considered the same, reports favorably thereon with an amendment to the text and an amendment to the title and recommends that the act as amended do pass.

The amendments are as follows:

1. Strike all after the enacting clause and insert the following:

That the National Trails System Act (82 Stat. 919; 16 U.S.C. 1241), as amended, is further amended as follows:

(1) In section 2(a) after "promote" insert "the preservation of,"; and after "outdoor areas" insert "and historic resources".

(2) In section 2(a) delete "(ii)" and the remainder of the sentence and insert "(ii) secondarily, within scenic areas and along historic travel routes of the Nation, which are often more remotely located.".

(3) In section 2(b) delete "and scenic" and insert ", scenic and historic".

(4) In section 3 redesignate subsection "(c)" as "(d)", and insert a new subsection (c) as follows:

"(c) Historic routes designated as National Historic Trails pursuant to section 5 of this Act, shall follow the original trails or routes of travel as closely as possible and practicable. Such trails shall have as their purpose the identification and marking of an historic route and its historic remnants and artifacts for public use and enjoyment. While such designation shall commemorate an entire route along its historic alinement, only those selected land and water based components of an historic trail which are on federally owned lands and which meet the national historic trail criteria established in this Act, are established as initial components of a national historic trail. The appropriate Secretary may subsequently designate other lands as segments of an historic trail upon application from State or local government agencies or private interests involved if such segments meet the national historic trail

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criteria established in this Act and such criteria supplementary thereto as the appropriate Secretary may prescribe, and are administered by such agencies or interests without expense to the United States.

(5) In the new section 3(d) delete "or national scenic" and insert ", national scenic or national historic".

(6) Change the title of section 5 to read "NATIONAL SCENIC AND NATIONAL HISTORIC TRAILS".

(7) In section 5(a), insert in the first sentence after the word "scenic" the words "and national historic" and change the second sentence to read: "There are hereby established the following National Scenic and National Historic Trails:".

(8) In section 5(a)(1), in the first sentence, after the word "Appalachian", insert "National Scenic", and in section 5(a)(2), in the first sentence, after "Pacific Crest", insert "National Scenic".

(9) In section 5(a), delete paragraph (3) and insert in lieu the following new paragraphs:

"(3) The National Historic Oregon Trail, a route of approximately two thousand miles extending from near Independence, Missouri, to the vicinity of Portland, Oregon, following a route as depicted on maps identified as 'Primary Route of the Oregon Trail 1841–1848', in the Department of the Interior's Oregon Trail study report dated April 1977.

"(4) The National Historic Mormon Pioneer Trail, a trail of approximately one thousand three hundred miles from Nauvoo, Illinois, to Salt Lake City, Utah, following the primary route of the Historic Mormon Trail depicted on a map, identified as, 'Vicinity Map, Mormon Pioneer Trail' in the Department of the Interior Mormon Trail study report dated June, 1978.

"(5) The National Historic Lewis and Clark Trail, a trail of approximately three thousand seven hundred miles, extending from Wood River, Illinois, to the mouth of the Columbia River in Oregon, following the outbound and inbound routes of the Lewis and Clark Expedition depicted on maps, identified as, 'Vicinity Map, Lewis and Clark Trail' study report dated April 1977.

"(6) The National Historic Iditarod Trail, a route of approximately two thousand miles extending from Seward, Alaska, to Nome, Alaska, following the routes as depicted on maps identified as 'Seward-Nome Trail', in the Department of the Interior's study report entitled 'The Iditarod Trail (Seward-Nome Route) and other Alaskan Gold Rush Trails' dated September 1977;".

(10) In section 5(b) after "national scenic" wherever it appears insert "or national historic"; delete the third sentence; and delete that portion of the fourth sentence which precedes the numerical listing, and insert in lieu the following: "The studies listed in subsection (c) of this section shall be completed and submitted to the Congress, with recommendations as to the suitability of trail designation, not later than three complete fiscal years from the date of enactment of their addition to this subsection, or from the date of enactment of this sentence, whichever is later. Such studies when submitted, shall be printed as a House or Senate document, and shall include, but not be limited to:".

(11) In section 5(b)(3) after the semicolon add "and in the case of national historical trails the report shall include the recommendation of the Secretary of the Interior's National Park System Advisory Board as to the national historic significance based on the criteria developed under the Historic Sites Act of 1935 (49 Stat. 666; 16 U.S.C. 461);".

(12) In section 5(b)(8) delete the word "and" at the end of the sentence; in section 5(b)(9) change the period at the end of the sentence to a semicolon; and at the end of section 5(b) add the following new paragraphs:

"(10) the anticipated impact of public outdoor recreation use on the preservation of a proposed national historic trail and its related historic and archeological features and settings, including the measures proposed to insure evaluation and preservation of the values that contribute to their national historic significance; and

"(11) to qualify for designation as a national historic trail, a trail must meet all three of the following criteria:

"(A) It must be a trail or route established by historic use and must be historically significant as a result of that use. The route

need not currently exist as a discernable trail to qualify, but its location must be sufficiently known to permit evaluation of public recreation and historical interest potential. A designated trail should generally follow the historic route, but may deviate somewhat on occasion of necessity to avoid difficult routing through subsequent development, or to provide some route variation offering a more pleasureable recreational experience. Such deviations shall be so noted on site. Trail segments no longer possible to travel by trail due to subsequent development as motorized transportation routes may be designated and marked on-site as segments which link to the historic trail.

"(B) It must be of national significance with respect to any of several broad facets of American history, such as trade and commerce, migration and settlement, or military campaigns. To qualify as nationally significant, historic use of the trail must have had a far-reaching effect on broad patterns of American culture. Trails significant in the history of native Americans may be included.

"(C) It must have a significant potential for public recreational use or historical interest based on historic interpretation and appreciation. The potential for such use is generally greater along roadless segments developed as historic trails, and at historic sites associated with the trail. The presence of recreation potential not related to historic appreciation is not sufficient justification for designation under this category.".

(13) In section 5 delete subsection (d), and insert a new section 5(d) to read as follows:

"(a) The Secretary charged with the administration of each respective trail shall, within one year of the date of the addition of any national scenic or national historic trail to the System, and within sixty days of the enactment of this sentence for the Appalachian and Pacific Crest National Scenic Trails, establish an advisory council for each such trail, each of which councils shall expire ten years from the date its establishment. The appropriate Secretary shall consult with such council from time to time with respect to matters relating to the trail, including the selection of rights-of-way, standards for the erection and maintenance of markers along the trail, and the administration of the trail. The members of each advisory council, which shall not exceed thirty-five in number, shall serve for a term of two years and without compensation as such, but the Secretary may pay, upon vouchers signed by the chairman of the council, the expenses reasonably incurred by the council and its members in carrying out their responsibilities under this section. Members of each council shall be appointed by the appropriate Secretary as follows:

"(i) a member appointed to represent each Federal department or independent agency administering lands through which the trail route passes, and each appointee shall be the person designated by the head of such department or agency;

"(ii) a member appointed to represent each State through which the trail passes, and such appointments shall be made from recommendations of the Governors of such States;

"(iii) one or more members appointed to represent private organizations, including coroprate and individual landowners and land users, which in the opinion of the Secretary, have an established and recognized interest in the trail, and such appointments shall be made from recommendations of the heads of such organizations: *Provided*, That the Appalachian Trail Conference shall be represented by a sufficient number of persons to represent the various sections of the country through which the Appalachian Trail passes; and

"(iv) the Secretary shall designate one member to be chairman and shall fill vacancies in the same manner as the original appointment.".

(14) In section 5 add new subsections (e) and (f) as follows:

"(e) Within two complete fiscal years of the date of enactment of this subsection for the Pacific Crest and Appalachian Trails, the resopnsible

Secretary shall, after full consultation with affected States, and the Appalachian Trail Conference in the case of the Appalachian Trail, submit to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a comprehensive plan for the acquisition, management, development, and use of the trail, including but not limited to, the following items:

"(1) specific objectives and practices to be observed in the management of the trail, including the identification of all significant natural, historical, and cultural resources to be preserved, details of anticipated cooperative agreements to be consummated with other entities, and an identified carrying capacity of the trail and a plan for its implementation;

"(2) an acquisition or protection plan, by fiscal year, for all lands to be acquired by fee title or lesser interest, along with detailed explanation of anticipated necessary cooperative agreements for any lands not to be acquired;

"(3) general and site-specific development plans, including anticipated costs.".

"(f) Within two complete fiscal years of the date of enactment of legislation (including this Act) designating a trail as part of the system, the responsible Secretary shall, after full consultation with affected Federal land managing agencies, the Governors of the affected States, and the relevant Advisory Council established pursuant to section 5(d) of this Act, submit to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate, a comprehensive plan for the management, and use of the trail, including but not limited to, the following items:

"(1) specific objectives and practices to be observed in the management of the trail, including the identification of all significant natural, historical, and cultural resources to be preserved, details of any anticipated cooperative agreements to be consummated with State and local government agencies or private interests, and for national scenic or national recreational trails an identified carrying capacity of the trail and a plan for its implementation; and

"(2) the process to be followed by the appropriate Secretary to implement the marking requirements established in section 7(d) of this Act.".

(15) In section 6 in the first sentence delete "or national scenic" and insert ", national scenic or national historic", and in the second sentence delete "or scenic" and insert ", national scenic, or national historic'.

(16) Delete all of section 7 and insert a new section 7 as follows:

"ADMINISTRATION AND DEVELOPMENT

"SEC. 7. (a) Pursuant to section 5(a), the appropriate Secretary shall select the rights-of-way for National Scenic and National Historical Trails and shall publish notice thereof in the Federal Register, together with appropriate maps and descriptions: Provided, That in selecting the rights-of-way full consideration shall be given to minimizing the adverse effects upon the adjacent landowner or user and his operation. Development and management of each segment of the National Trails System shall be designed to harmonize with and complement any established multiple-use plans for that specific area in order to insure continued maximum benefits from the land. The location and width of such rights-of-way across Federal lands under the jurisdiction of another Federal agency shall be by agreement between the head of that agency and the appropriate Secretary. In selecting rights-of-way for trail purposes, the Secretary shall obtain the advice and assistance of the States, local governments, private organizations, and landowners and land users concerned.

"(b) After publication of notice in the Federal Register, together with appropriate maps and descriptions, the Secretary charged with the administration of a national scenic or national historic trail may relocate segments of a national scenic or national historic trail right-of-way, with the concurrence of the head of the Federal agency having

jurisdiction over the lands involved, upon a determination that: (i) such a relocation is necessary to preserve the purposes for which the trail was established, or (ii) the relocation is necessary to promote a sound land management program in accordance with established multiple-use principles: Provided, That a substantial relocation of the rights-of-way for such trail shall be by Act of Congress.

"(c) National scenic or national historic trails may contain campsites, shelters, and related-public-use facilities. Reasonable efforts shall be made to provide sufficient access opportunities to such trails and, to the extent practicable, efforts shall be made to avoid activities incompatible with the purposes for which such trails were established. Other uses along the trail, which will not substantially interfere with the nature and purposes of the trail, and which are currently allowed by administrative regulations, including the use of motorized vehicles, shall be permitted by the Secretary charged with the administration of the trail. The use of motorized vehicles by the general public along any national scenic or national historic trail shall be prohibited within the natural and historical areas of the national park system, the national wildlife refuge system, the national wilderness preservation system trails are designated as being closed to such use by the appropriate Secretary: *Provided*, That the Secretary charged with the administration of such trail shall establish regulations which shall authorize the use of motorized vehicles when, in his judgment, such vehicles are necessary to meet emergencies or to enable adjacent landowners or land users to have reasonable access to their lands or timber rights: *Provided further*, That private lands included in the national recreation, national scenic, or national historic trails by cooperative agreement of a landowner shall not preclude such owner from using motorized vehicles on or across such trails or adjacent lands from time to time in accordance with regulations to be established by the appropriate Secretary.

"(d) The Secretary of the Interior and the Secretary of Agriculture, in consultation with appropriate governmental agencies and public and private organizations, shall establish a uniform marker, including thereon an appropriate and distinctive symbol for each national recreation, national scenic, and national historic trail. Where the trails cross lands administered by Federal agencies such markers shall be erected at appropriate points along the trails and maintained by the Federal agency administering the trail in accordance with standards established by the appropriate Secretary and where the trails cross non-Federal lands, in accordance with written cooperative agreements, the appropiate Secretary shall provide such uniform markers to cooperating agencies who shall erect and maintain them in accordance with the standards established by the Secretary."

"(e) Where a national historic trail follows existing public roads, developed rights-of-way or waterways, and similar features of man's nonhistorically related development, approximating the original location of a historic route, such segments may be marked to facilitate retracement of the historic route, and where a national historic trail parallels an existing public road, such road may be marked to commemorate the historic route. No land or site located along a designated national historic trail shall be subject to the provisions of section 4(f) of the Department of Transportation Act (49 U.S.C. 1653(f)) unless such land or site is deemed to be of historical significance under appropriate historical site criteria such as those for the National Register of Historic Places.

"(f) Within the exterior boundaries of areas under their administration that are included in the right-of-way selected for the Appalachian National Scenic Trail and the Pacific Crest National Scenic Trail, the heads of Federal agencies may use lands for trail purposes and may acquire lands or interests in lands by written cooperative agreement, donation, purchase with donated or appropriated funds or exchange.

"(g) Where the lands included in Appalachian National Scenic Trail and the Pacific Crest National Scenic Trail right-of-way are outside of the exterior boundaries of federally administered areas, the Secre-

tary charged with the administration of such trail shall encourage the States or local governments involved (1) to enter into written cooperative agreements with landowners, private organizations, and individuals to provide the necessary trail right-of-way, or (2) to acquire such lands or interests therein to be utilized as segments of those trails: *Provided*, That if the State or local governments fail to enter into such written cooperative agreements or to acquire such lands or interests therein after notice of the selection of the right-of-way is published the appropriate Secretary may (i) enter into such agreements with landowners, States, local governments, private organizations, and individuals for the use of lands for trail purposes, or (ii) acquire private lands or interests therein by donation, purchase with donated or appropriated funds or exchange in accordance with the provisions of subsection (g) of this section. The lands involved in such rights-of-way should be acquired in fee, if other methods of public control are not sufficient to assure their use for the purpose for which they are acquired: *Provided*, That if the Secretary charged with the administration of such trail permanently relocates the right-of-way and disposes of all title or interest in the land, the original owner or his heirs or assigns shall be offered, by notice given at the former owner's last known address, the right of first refusal at the fair market price.

"(h) The Secretary of the Interior, in the exercise of his exchange authority, may accept title to any non-Federal property within the right-of-way of the Appalachian National Scenic Trail and the Pacific Crest National Scenic Trail and in exchange therefor he may convey to the grantor of such property and federally owned property under his jurisdiction which is located in the State wherein such property is located and which he classifies as suitable for exchange or other disposal. The values of the properties so exchanged either shall be approximately equal, or if they are not approximately equal the values shall be equalized by the payment of cash to the grantor or to the Secretary as the circumstances require. The Secretary of Agriculture, in the exercise of his exchange authority, may utilize authorities and procedures available to him in connection with exchanges of national forest lands.

"(i) For the Appalachian National Scenic Trail and the Pacific Crest National Scenic Trail, the appropriate Secretary may utilize condemnation proceedings without the consent of the owner to acquire private lands or interests therein pursuant to this section only in cases where, in his judgment, all reasonable efforts to acquire such lands or interests therein by negotiation have failed, and in such cases he shall acquire only such title as, in his judgment, is reasonably necessary to provide passage across such lands: *Provided*, The condemnation proceedings may not be utilized to acquire fee title or lesser interests to more than an average of 125 acres per mile.

"(j) The Secretary charged with the administration of a national recreation, national scenic, or national historic trail shall provide for the development and maintenance of such trails within federally administered areas or on federally owned lands and shall cooperate with and encourage the States to operate, develop, and maintain portions of such trails which are located outside the boundaries of federally administered areas. When deemed to be in the public interest, such Secretary may enter written cooperative agreements with the States or their political subdivisions, landowners, private organizations, or individuals to operate, develop, and maintain any portion of a national scenic or national historic trail either within or outside a federally administered area. Whenever the Secretary of the Interior makes any conveyance of land under any of the public land laws, he may reserve a right-of-way for trails to the extent he deems necessary to carry out the purposes of this Act.

"(k) The appropriate Secretary, with the concurrence of the heads of any other Federal agencies administering lands through which a national recreation, national scenic or national historic trail passes, and after consultation with the States, local governments, and organizations concerned, may issue regulations, which may be revised from time to time, governing the use, protection, management, development, and ad-

ministration of trails of the national trails system. In order to maintain good conduct on and along the trails located within federally administered areas and to provide for the proper government and protection of such trails, the Secretary of the Interior and the Secretary of Agriculture shall prescribe and publish such uniform regulations as they deem necessary and any person who violates such regulations shall be guilty of a misdemeanor, and may be punished by a fine of not more than $500, or by imprisonment not exceeding six months, or by both such fine and imprisonment.".

(17) In section 8 in the first sentence of subsection (a) after "establishing park, forest, and other recreation" insert "and historic" and after "administered by States, and recreation" insert "and historic"; and at the end of the first sentence insert the following: "The Secretary is also directed to encourage States to consider, in their comprehensive statewide historic preservation plans and proposals for financial assistance for State, local, and private projects submitted pursuant to the Act of October 15, 1966 (80 Stat. 915), as amended, needs and opportunities for establishing historic trails."

(18) In section 10, delete "(a)(1)" and insert "(a)"; substitute "subsequent fiscal years" for "the subsequent fiscal year"; and strike paragraph numbered (2).

2. Amend the title so as to read:

An Act to establish a National Historic Trails Category within the National Trails System, to designate certain historic routes as National Historic Trails, and for other purposes.

I. Purpose

The purpose of H.R. 6900, as reported by the Committee on Energy and Natural Resources, is to establish a new national trail category within the National Trails System Act of 1968 to be known as national historic trails. Four national historic trails are designated under the new category—the National Historic Oregon Trail, the National Historic Mormon Pioneer Trail, the National Historic Lewis and Clark Trail, and the National Historic Iditarod Trail.

In addition, various generic and other specific additions and changes are made to existing law.

II. Background

The National Trails System Act, approved October 2, 1968 (82 Stat. 919), as amended, established a mechanism for the development of a national system of trails. At that time two trail routes were designated as national scenic trails: The Appalachian Trail, traversing approximately 2,000 miles through the Eastern United States extending from Maine to Georgia, and the Pacific Crest Trail, traversing approximately 2,350 miles extending through three Western States from Washington to California. Segments of these two popular hiking routes had been in existence through previous use, and gained formal recognition and increased Federal protection and support through this legislation.

This 1968 enabling act also identified a series of other prospective trail routes considered to be of possible merit for national trail designation, but for which insufficient information was available at that time upon which to make a final determination. Hence, identification of such prospective trails was made in the legislation—commonly re-

ferred to as the "study list"—on which the appropriate Secretary was directed to make further detailed study and submit to the Congress recommendations as to the suitability of the various study candidates for designation as national trails.

Many of the 14 study trails originally listed have been studied and recommendations have been transmitted to the Congress. Four such trails which received positive recommendations are the National Historic Oregon Trail, the National Historic Mormon Trail, the National Historic Lewis and Clark Trail, and the National Historic Iditarod Trail, all of which are proposed for additions to the National Trails System by this legislation.

In the process of review of the various routes identified on the study list, it became apparent that two quite distinctly different types of trails existed, each having materialized from different patterns of use and for different purposes, and each, likewise, continuing to be worthy of perpetuation for somewhat differing patterns and purposes of use. The two initially established national scenic trails had materialized through time principally for recreational benefit. They generally traversed major mountain ranges through a great variety of scenery and landscapes, and afforded physical refreshment and spiritual inspiration to the hiker. Their continued use into the future definitely necessitates the protection of a continuous and uninterrupted route, of travel, as well as adequate buffering from the intrusions of man's adjacent, more civilized and developed world.

In contrast, a number of the routes identified for study involved routes of travel of our early pioneers—paths of explorers, of settlers, of the advance of commerce, and of military campaigns. It is important that these routes be appropriately commemorated, not only on maps and in the history books, but also on the very face of the American landscape itself, as opportunities to identify these very real remnant imprints of our historical heritage may yet physically exist. It is the purpose of this legislation to mark the entire length of designated historic trails while those imprints may still be discernable.

Much, if not most, of these imprints no longer exist, however—having faded into oblivion through the influence of natural forces and time, or through the expansion and intensification of use of travel routes and attendant development by man over the very top of the original route itself. In either event, original historic fabric may not yet remain. Nevertheless, the marking of the entire route, on-site, can and should be considered, where feasible and appropriate.

As can be easily recognized, travel over many of these historic routes had a much different purpose than did the more contemporary routes which have materialized for scenic and recreational purposes. Routes for these earlier travels often materialized as the shortest, easiest or fastest distance between two points, and bore no necessary contemplation of or correlation with routes of attraction or enjoyment. Such routes were often monotonous, hot, dusty (or all of the above), and foot travel over all or parts of these same routes today, even under greatly decreased duress, may still not be sufficiently attractive to warrant continuous preservation of the entire route across the countryside for purposes of trail travel.

It may never be possible—as a practical matter—to traverse an entire historic trail route because of the contemporary works of man

and the patterns of landownership. Such are the realities associated with the establishment and use of historic trails.

The Oregon Trail

The Oregon Trail was a wagon road stretching 2,000 miles from Missouri to Oregon's Willamette Valley. It was not a road in any modern sense, but only parallel ruts leading across endless prairie, sagebrush desert, and mountains to an unknown "Promised Land." A quarter of a million people set out on this faint track, their possessions reduced to what could be carried in a wagon or on the backs of their livestock. Most said goodbye forever to friends, relatives, and familiar places. Many were destined to a shallow grave along the way, and the Oregon Trail often has beeen called the longest cemetery in the Nation.

To survivors, the 6-month journey was the most important event in their lives. Over 700 of them left diaries and journals. These written accounts, together with remnants and relics of the trail itself, today provide a window to the past.

Many trail remnants have been erased by the bulldozer and the plow. Much of the route today lies under highways and city streets, or traverses farmland where prairie grasses and sagebrush have given way to corn and wheat. Here and there, however, are segments relatively untouched by civilization. Much of the Oregon Trail's potential for public enjoyment lies in these visible remnants, and in the historic sites associated with the trail.

What remains of the Oregon Trail lies gently on the land, as easily erased as a pencil line on paper. If protected, these remants can provide future generations the opportunity to catch glimpses of our land as it appeared to the pioneers, to relive vicariously their great adventure, and to sense the enormity of its consequences.

The Mormon Pioneer Trail

The Mormon Pioneer Trail, like the Oregon Trail which it parallels in many places, was a most significant route during the westward expansion of the American people during the mid-19th century. Similarly, the Mormon migration was one of the most dramatic events of this period, for it was the permanent movement of a whole people. Family groups under the leadership of Brigham Young, seeking to avoid religious persecution, left their homes and braved many hardships in order to accomplish their dream of finding a new location and a fresh start.

Except for possibly the segment in Iowa, Young's Mormon pioneers did not originate the route they followed. Rather, it was the com[illegible]a-tion of several existing routes beginning with the earlier trapper, [illegible]mis-sionary, and Indian trails, and the more widely know Oregon, Overland, and California Trails. Yet, the Mormon emigration differed profoundly from the Oregon and California westward migrations.

For their journey from Nauvoo, Ill., Brigham Young set forth the organization and rules by which the Mormons would travel. For example, the pioneers were directed to organize themselves into tens, fifties, and hundreds. During 1847, these groups were organized in semimilitary fashion with Brigham Young as general and others serving as company captains, hunters, and scouts.

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Unlike most of the California- or Oregon-bound emigrants, the first thoughts of Brigham Young's pioneer company were to improve the journey for the Mormons who were to follow. They took special note of good campgrounds, wood, water, and grass, and the pioneers were careful to measure distances and set up mileposts.

The Mormons established semipermanent camps and ferries, graded down the steep approaches to fords, and cleared boulders out of the path. Unlike the Oregon or California bound travelers, who didn't expect to go that way again, the Mormons not only traveled west, but also eastward to pick up supplies and new converts at the Missouri River, or to meet faltering companies and help them on to Salt Lake City.

The route followed by the Mormon pioneers is of national significance for a number of different reasons. Existing national monuments, Federal, State, and local recreation areas, and scenic tour routes provide a full range of outdoor recreation opportunities along or accessible from the Mormon Trail. In addition, many historic points along the 1,300-mile route have high potential for historical interpretation. However, the main significance of the trail is the role it played as a main highway for the development of the West.

While most of the original Mormon Trail has disappeared across Iowa and Nebraska, in Wyoming and Utah much of the environment is little different today than it was in 1847. In these sections, numerous ruts and other trail evidence remain as visible reminders of the courage and determination of the Mormon pioneers.

The Lewis and Clark Trail

The Lewis and Clark Expedition of 1804–06 is considered by many to be one of the most important factors in the expansion of the continental United States. It paved the way for the settlement and development of the Northern Plains, the Rocky Mountains, and the Pacific Northwest. This journey had a profound and lasting effect on the political, economic, and geographic development of the western half of the Nation.

The need for exploration of the western portions of the continent had become apparent to President Jefferson long before Napoleon made his offer to sell the Louisiana Territory. In his address to Congress on January 18, 1803, Jefferson asked for and was granted an appropriation of $2,500 for an expedition across the continent to the Oregon Country.

Later that year, Napoleon offered to sell all of the Louisiana Territory for $15 million. Jefferson took this opportunity and on October 25, 1803, the United States Senate ratified the Louisiana Purchase Treaty.

On May 14, 1804, with the firing of a cannon shot, the Lewis and Clark Expedition set forth from their winter camp at the mouth of Wood River, Ill., to secure the American claim. The trip lasted 2 years, 4 months, and 9 days and encompassed about 7,500 miles. Few similar journeys were so well managed and so free from errors in judgment, miscalculations, and tragedy. Only an incident with the Sioux Indians at the mouth of the Bad River and another with the Blackfeet which resulted in the deaths of two Indians marred the trip.

The only death among members of the expedition was that of Sergeant Floyd and is presumed to have resulted from a ruptured appendix.

The contacts made with the Indians by Lewis and Clark were of great political importance in the Government's later dealings with the various tribes. By completing a journey up the Missouri River and then down the Columbia to the Pacific Ocean, the Americans strengthened their claim to the Oregon country.

There were significant economic benefits resulting from the expedition. Trappers and then traders gradually penetrated this rich land. Lewis and Clark established that beaver were abundant and exploitation began almost immediately. The fur trade was the principal industry of the area until the late 1830's when the price for pelts declined.

Descriptions and specimens of the flora and fauna taken back by members of the expedition added considerably to the scientific knowledge existing at that time. Birds, small mammals, hides, and boxes of Indian articles were returned to the East. Detailed descriptions of the pronghorned antelope, the Columbia blacktailed deer, beaver, bobcats, foxes, wolves, and squirrels were prepared.

Geographically, the expedition had more far-reaching effects. Prior to the journey, it was generally assumed that a mere 20 miles separated the Missouri headwaters from the headwaters of the Columbia River which could be followed to the sea. They had not anticipated mountains as extensive as the Rockies. Instead of 20 miles, they were forced to traverse almost 200 miles of rugged territory to reach a tributary of the Snake River. Most significant, however, was the final realization that a northwest water passage to the Orient could never exist.

On their 7,500-mile journey, the Lewis and Clark Expedition traversed a wide variety of physical environments. Today, some 170 years later, the Lewis and Clark Trail still crosses a diverse landscape. Although some of the land through which the trail runs has been developed, many other portions of the route which lie in undeveloped wilderness look the same now as they did in 1805. As one retraces the steps of Meriwether Lewis, and William Clark, one can still imagine the thrill and excitement which must have accompanied this momentus expedition.

The Iditarod Trail

The Iditarod Trail, otherwise known as the Seward-Nome route, is composed of a number of trails and side trails developed at different times during the Alaska Gold Rush era. The Iditarod strike began in 1908; it was the last of the major Alaskan strikes and prompted the Alaska Road Commission to improve the Rainy Pass-Kaltag section of the Seward-to-Nome trail. Because the Iditarod mining district was the most common destination of travelers in this last phase of the Gold Rush era, the name Iditarod Trail has become a term of convenience to describe the many geographic and historic segments of the Seward-to-Nome trail. These trails, aggregating 2,037 miles, offer a rich diversity of climate, terrain, scenery, wildlife, recreation, and historic resources in an environment largely unchanged since the days of the stampeders. It is the isolated, primitive quality of this historical environment that makes the National Historic Iditarod Trail proposal unique. Nowhere in the National Trails System is there such an ex-

tensive landscape, so demanding of durability and skill during its winter season of travel. On the Iditarod, today's adventurer can duplicate the experience and challenge of yesteryear.

III. Legislative History

S. 2974 was introduced on April 24, 1978 by Senators Church, Jackson, Paul G. Hatfield, McGovern, Eagleton, McClure, Zorinsky, Stevens, Culver, Gravel, and Mark O. Hatfield. The Parks and Recreation Subcommittee held a hearing on S. 2974, S. 929, S. 2659, S. 2663, S. 2664, S. 2705, and H.R. 6900, on May 1, 1978.

H.R. 6900 was passsed by the House of Representatives on April 3, 1978.

IV. Committee Recommendation and Tabulation of Votes

The Senate Committee on Energy and National Resources in open business session on July 20, 1978, by unanimous vote of a quorum present recommends that the Senate pass H.R. 6900, if amended as described herein.

V. Committee Amendments

During consideration of H.R. 6900, the committee adopted an amendment in the nature of a substitute. This amendment incorporates the text and title of S. 2974 as approved by the committee. With the exceptions noted below, the language of the House-passed version and the committee substitute are identical.

(1) The substitute text designates four trails as national historical trails rather than just the Oregon Trail proposed in the House bill. Besides the Oregon Trail, the substitute text establishes the National Historic Mormon Pioneer Trail, the National Historic Lewis and Clark Trail, and the National Historic Iditarod Trail.

(2) The substitute does not authorize any acquisition of land. The committee-adopted text is designed simply to commemorate the entire length of an historic travel route. Initially, only those segments located on federally owned lands and which meet the national historic trail criteria established in this act are established as components of the national historic trail in question. Should a State, local governmental agency, or private interest desire to have a segment of an identified historic trail under their control designated as a component of the national historic trail, application may be made with the appropriate Secretary. If the segment meets the historic trail criteria established in this legislation and such other criteria as may be prescribed by regulation, the appropriate Secretary may then designate the segment as a component of the historic trail. Such segment shall be administered without expense to the Federal Government.

(3) The substitute text provides specific instructions as to what should be included in the comprehensive management plans for any new trail.

(4) The substitute text amends section 7 of the 1968 act to insure that motorized vehicles not be excluded from trails where established use occurs. There is no change in the existing language, however, that would allow the use of motorized vehicles by the general public along any national scenic or national historic trail, within the natural and

historical areas of the national park system, the national wildlife refuge system, and the national wilderness preservation system where they are presently prohibited or on other Federal lands where trails are designated as being closed to such use by the appropriate Secretary.

Because many of the historic routes designated by this legislation cross the United States, East to West, it is not the intention of this committee to create hardships on public or private projects which must cross the designated historic trails at numerous points. Thus the committee amended section 7 of the 1968 act further to include a provision which provides that only those lands or sites located along a designated national historic trail which are deemed to be of historical significance under appropriate historical site criteria such as those for the National Register of Historic Places, shall be subject to the provisions of section 4(f) of the Department of Transportation Act. Further, by designating certain historic routes as national historic trails, the committee does not wish to limit future development along these established trails. For example, the committee understands that there may be large deposits of thorium, an increasingly important energy mineral, in the vicinity of the point where the Lewis and Clark Trail passes from Idaho into Montana at Lemhi Pass. Since the intent of the committee in establishing the new historic trails category is to identify and mark various nationally significant historic routes, the development of the thorium deposits should not be affected by the designation of the Lewis and Clark Trail as a national historic trail, so long as such development is in harmony with the purposes of other historic preservation laws and regulations.

The committee notes that the designation of a route as a national historic trail should have no effect on the National Historic Preservation Act. It is not intended that the entire route of a trail be considered for designation to the National Register of Historic Places, only those sites on the trail that individually have the requisite historic qualities should be considered.

(5) The substitute text deletes the Oregon Trail land acquisition money contained in H.R. 6900 as passed by the House of Representatives.

In addition, section 10(b) is deleted. This provision provided that the Secretary of the Interior request, from the Appalachian Trail Conference, an annual report on various aspects of Interior Department's land acquisition program for the Appalachian National Scenic Trail. It does not seem appropriate to have the Secretary of the Interior to ask the Appalachian Trail Conference to transmit to the Congress a review of the Department's progress. Therefore, the committee urges the Appalachian Trail Conference to transmit a report to the appropriate committees of the Congress at the close of each fiscal year. Such report should include, but not be limited to, comments on:

(a) The manner in which negotiations for the acquisition program are being conducted for every section of the trail;

(b) The attitudes of the landowners with whom negotiations have been undertaken; and

(c) Whether in any case larger interests in land are being acquired than are necessary to carry out the purposes of this act.

VI. Cost and Budgetary Considerations

H.R. 6900, as amended by the committee, contains no authorization. The only cost which might be associated with the passage of this legislation would be the marking of the designated national historic trails.

A cost estimate has been requested from the Congressional Budget Office and will be made a part of the record when the bill is considered by the Senate.

VII. Regulatory Impact Evaluation

The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilties on private individuals and businesses. H.R. 6900 establishes a new trail category within the 1968 National Trail System Act, and designates four national historic trails.

No personal information would be collected in administering the program, therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of H.R. 6900.

VIII. Executive Communications

The pertinent legislative reports and communications received by the committee from the Department of the Interior setting forth executive agency recommendations relating to S. 2074 and H.R. 6900 are set forth below:

U.S. Department of the Interior,
Office of the Secretary,
June 29, 1978.

Hon. Henry M. Jackson,
Chairman, Committee on Energy and Natural Resources, U. S. Senate, Washington, D.C.

Dear Mr. Chairman: On May 1, 1978, Assistant Secretary Herbst testified before your committee on several bills, including H.R. 6900, a bill to amend the National Trails System Act of 1968 (82 Stat. 919), as amended, to designate the Oregon National Historic Trail and Travelway as a unit of the National Trails System.

There is one provision of that bill upon which we did not testify, but for which we would nonetheless like to indicate our support. Paragraph 19 of section 1(a) of H.R. 6900, as passed by the House, deletes the second proviso of section 7(g) of the National Trails Act. This proviso prohibits the use of condemnation to acquire lands or interests in lands for the purposes of the Pacific Crest National Scenic Trail.

Enactment of the repeal of the second proviso of section 7(g) is extremely important to the Bureau of Land Management of this Department, which partially administers this trail, in conjunction with the Forest Service of the Department of Agriculture. Without condemnation authority, we doubt that the California portion of the trail can be completed. Approximately 351 miles of the trail corridor remain in private ownership, with 279 miles in California alone. Condemna-

tion authority will be especially necessary where attempts at negotiation have failed or where the trail corridor is threatened with adverse or potentially adverse development. Further, the mere existence of condemnation authority often causes landowners to take a more realistic negotiating posture.

For these reasons, we especially support section 19 of H.R. 6900 and urge its enactment.

Sincerely,

ROBERT L. HERBST,
Assistant Secretary.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., December 14, 1978.

Hon. WALTER F. MONDALE,
President of the Senate,
Washington, D.C.

DEAR MR. PRESIDENT: Enclosed is a draft bill to amend the National Trails System Act by designating the Lewis and Clark Trail, located in portions of Missouri, Kansas, Nebraska, Iowa, South Dakota, Montana, Idaho, Oregon and Washington as a component of the National Trails System.

We recommend that the bill be referred to the appropriate Committee for consideration and that it be enacted.

The Act of October 2, 1968 (82 Stat. 919; 16 U.S.C. 1241), established a National Trails System, designated the Appalachian and Pacific Crest Trails as National Scenic Trails and listed 14 additional routes, including the Lewis and Clark Trail, for study as potential National Scenic Trails. The act also prescribed procedures for establishing additional national scenic trails, national recreation trails, and connecting and side trails in the system.

The enclosed draft bill implements the recommendations resulting from the Department's study of the Lewis and Clark Trail route. We have concluded that the trail, as studied and presented in the report, meets the criteria for addition to the National Trails System as a national historic trail. Legislation to establish a category of national historic trails within the National Trails System has been submitted to the Congress separately.

The Lewis and Clark Trail route, as discussed in the enclosed copy of the study report, follows the outbound and inbound 3,700-mile route of the 1804–06 Lewis and Clark Expedition from St. Louis, Mo., to the Pacific coast in Oregon.

The majority of the Lewis and Clark Trail route is water based along the Missouri, Snake, and Columbia Rivers. The land-based trail will be located in Idaho and Oregon where the expedition actually traveled overland.

Overall coordination of the Lewis and Clark National Historic Trail would be assigned to the Secretary of the Interior. The Secretary will cooperate with the heads of other Federal agencies, where lands administered by them are involved, and with State, county, and local agencies or private trail or historic organizations in planning the development of the trail and its subsequent management.

The proposed Lewis and Clark National Historic Trail can offer a variety of historical, scenic, and recreational opportunities.

The Office of Management and Budget has advised that this legislative proposal is in accord with the program of the President.

Sincerely,

ROBERT HERBST,
Assistant Secretary.

Enclosures.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., October 5, 1977.

Hon. WALTER F. MONDALE,
President of the Senate,
Washington, D.C.

DEAR MR. PRESIDENT: Enclosed is a draft bill to amend the National Trails System Act by designating the Oregon Trail, located in portions of Missouri, Kansas, Nebraska, Wyoming, Idaho, Oregon, and Washington, as a component of the National Trails System.

We recommend that the bill be referred to the appropriate committee for consideration and that it be enacted.

The act of October 2, 1968 (82 Stat. 919; 16 U.S.C. 1241), established a National Trails System, designated the Appalachian and Pacific Crest Trails as national scenic trails and listed 14 additional routes, including the Oregon Trail, for study as potential national scenic trails. The act also prescribed procedures for establishing additional national scenic trails, national recreation trails, and connecting and side trails in the system.

The enclosed draft bill implements the recommendations resulting from the Department's study of the Oregon Trail route. We have concluded that the trail, as studied and presented in the report, meets the criteria for addition to the National Trails System as a national historic trail. Legislation to establish a category of national historic trails within the National Trails System has been submitted to the Congress separately.

The Oregon Trail route, as discussed in the enclosed copy of the study report, is the route thought to have received the most use as a wagon road by Willamette Valley, Oreg., bound emigrants during the period 1841–48. That period of western migration was historically very significant to the development of Oregon and the rest of the Pacific Northwest. The route, approximately 2,000 miles in length, extended from near Independence, Mo., to the vicinity of Portland, Oreg.

The components of the trails recommended for initial designation and development are those portions of the trail which are within the exterior boundaries of existing federally administered areas. Under the proposed legislation, the Secretary of the Interior may designate trail systems outside of the exterior boundaries of federally administered areas as components of the Oregon National Historic Trail upon application from State or local government agencies or private interests when prescribed criteria are met and when those segments

are administered by such agencies or interests without expense to the United States.

Overall coordination of the Oregon National Historic Trail would be assigned to the Secretary of the Interior. The Secretary will cooperate with the heads of other Federal agencies, where lands administered by them are involved, and with State, county, and local agencies or private trail or historic organizations in planning the development of the trail and its subsequent management.

The proposed Oregon National Historic Trail offers a variety of historical, scenic, and recreation opportunities.

The Office of Management and Budget has advised that this legislative proposal is in accord with the program of the President.

Sincerely,

JAMES A. JOSEPH,
Under Secretary.

Enclosures.

UNITED STATES DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., May 26, 1977.

Hon. WALTER F. MONDALE,
President of the Senate,
Washington, D.C.

DEAR MR. PRESIDENT: At the direction of the President and as part of his message on the environment, enclosed is a draft bill to establish national historic trails as a new category of trails within the National Trails System. We recommend that the bill be referred to the appropirate committee for consideration and that it be enacted.

The purpose of the National Trails System Act is to promote access to, travel within, and the enjoyment and appreciation of the open-air, outdor areas of the Nation. This is to be accomplished by instituting a national system of recreation and scenic trails.

The act identifies three types of trails for inclusion in the system: (1) national recreation trails; (2) national scenic trails; and (3) connecting scenic trails.

No provision is made for historic trails per se, although "historic qualities" are mentioned in connection with the characteristics which national scenic trails should have. The act indicates that national scenic trails, are to provide for maximum outdoor recreation potential and for the conservation and enjoyment of the nationally significant scenic, historic, natural or cultural qualities of the areas through which such trails may pass.

During the course of its studies of the routes listed in the National Trails System Act for possible designation as national scenic trails, the Department of the Interior has found that many of the routes which are historically notable lack substantial scenic characteristics throughout much of their length. They often traverse country which is not particularly amendable to long-distance foot, horseback, or bicycle travel. These trail routes although important for their historic aspects, do not fit readily into the scenic trail mold. They are, however, significant routes which have played major roles in the history of our coun-

try. For that reason, and because certain segments of the routes can provide nationally significant interpretive/recreation opportunities and have high potential for enhancing the public's identification with the Nation's heritage, these routes merit Federal recognition.

To facilitate recognition of routes or segments thereof which meet historic/interpretive/recreation criteria, it is recommended that the National Trails System Act be amended to include a new category of trails, national historic trails. Establishment of such a category would provide a new means of achieving the goals of the National Trails System Act in terms of these special types of trails—combining the provision of quality outdoor recreation opportunities in close asociation with historic events of national significance.

The Office of Management and Budget has advised that this legislative proposal is in accord with the program of the President.

Sincerely,

CECIL D. ANDRUS, *Secretary.*

IX. CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, H.R. 8803, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

ACT OF OCTOBER 2, 1968 (82 STAT. 919; 16 U.S.C. 1241) IS AMENDED (92 STAT. 159)

* * * * * * *

STATEMENT OF POLICY

SEC. 2. (a) In order to provide for the ever-increasing outdoor recreation needs of an expanding population and in order to promote *the preservation of*, public access to, travel within, and enjoyment and appreciation of the open-air, outdoor areas *and historic resources* of the Nation, trails should be established (i) primarily, near the urban areas of the Nation, and [(ii) secondarily, within established scenic areas more remotely located.] *(ii) secondary, within scenic areas and along historic travel routes of the Nation, which are often more remotely located.*

(b) the purpose of this Act is to provide the means for attaining these objectives by instituting a national system of recreation [and scenic], *scenic and historic* trails, by designating the Appalachian Trail and the Pacific Crest Trail as the initial components of that system, and by prescribing the methods by which, and standards according to which, additional components may be added to the system.

NATIONAL TRAILS SYSTEM

SEC. 3. The national system of trails shall be composed of—

(a) National recreation trails, established as provided in section 4 of this Act, which will provide a variety of outdoor recreation uses in or reasonably accessible to urban areas.

(b) National scenic trails, established as provided in section 5 of this Act, which will be extended trails so located as to provide for maximum outdoor recreation potential and for the conservation and enjoyment of the nationally significant scenic, historic, natural, or cultural qualities of the areas through which such trails may pass.

(c) Historic routes designated as National Historic Trails pursuant to section 5 of this Act, shall follow the original trails or routes of travel as closely as possible and practicable. Such trails shall have as their purpose the identification and marking of an ihstoric route and its historic remnants and artifacts for public use and enjoyment. While such designation shall commemorate an entire route along its historic alinement, only those selected land and water based components of an historic trail which are on federally owned lands and which meet the national historic trail criteria established in this Act, are established as initial components of a national historic trail. The appropriate Secretary may subsequently designate other lands as segments of an historic trail upon application from State or local governmental agencies or private interests involved if such segments met the national historic trail criteria established in this Act and such criteria supplementary thereto as the appropriate Secretary may prescribe, and are administered by such agencies or interests without expense to the United States.

[(c)] *(d)* Connecting or side trails, established as provided in section 6 of this Act, which will provide additional points of public access to national recreation [or national scenic], *national scenic or national historic* trails or which will provide connections between such trails.

The Secretary of the Interior and the Secretary of Agriculture, in consultation with appropriate governmental agencies and public and private organizations, shall establish a uniform marker for the national trails system.

* * * * * * *

[NATIONAL SCENIC TRAILS]

NATIONAL SCENIC AND NATIONAL HISTORIC TRAILS

SEC. 5. (a) National scenic *and national historic* trails shall be authorized and designated only by Act of Congress. [There are hereby established as the initial National Scenic Trails:] *There are hereby established the following National Scenic and National Historic Trails:*

(1) The Appalachian *National Scenic* Trail, a trail of approximately two thousand miles extending generally along the Appalachian Mountains from Mount Katahdin, Maine, to Springer Mountain, Georgia. Insofar as practicable, the right-of-way for such trail shall comprise the trail depicted on the maps identified as "Nationwide System of Trails, Proposed Appalachian Trail, NST–AT–101–May 1967", which shall be on file and available for public inspection in the office of the Director of the National Park Service. Where practicable, such rights-of-way shall include lands

protected for it under agreements in effect as of the date of enactment of this Act, to which Federal agencies and States were parties. The Appalachian Trail shall be administered primarily as a footpath by the Secretary of the Interior, in consultation with the Secretary of Agriculture.

(2) The Pacific Crest *National Scenic Trail*, a trail of approximately two thousand three hundred fifty miles, extending from the Mexican-California border northward generally along the mountain ranges of the west coast States to the Canadian-Washington border near Lake Ross, following the route as generally depicted on the map, identified as "Nationwide System of Trails, Proposed Pacific Crest Trail, NST–PC–103–May 1967" which shall be on file and available for public inspection in the office of the Chief of the Forest Service. The Pacific Crest Trail shall be administered by the Secretary of Agriculture, in consultation with the Secretary of the Interior.

[(3) The Secretary of the Interior shall establish within sixty days of the enactment of this subsection an Advisory Council for the Appalachian National Scenic Trail which shall terminate one hundred and twenty months from the date of enactment of this subsection. The Secretary of the Interior shall consult with such Council from time to time with respect to matters relating to the Trail, including the selection of rights-of-way, standards for the erection and maintenance of markers along the Trail, and the administration of the Trail. The members of the Advisory Council, which shall not exceed thirty-five in number, shall serve for a term of two years without compensation as such, but the Secretary may pay, upon vouchers signed by the Chairman of the Council, the expenses reasonably incurred by the Council and its members in carrying out their responsibilities under this section. Members of the Council shall be appointed by the Secretary of the Interior as follows:

(i) a member appointed to represent each Federal department or independent agency administering lands through which the Trail route passes and each appointee shall be the person designated by the head of such department or agency;

(ii) a member appointed to represent each State through which the Trail passes and such appointment shall be made from the recommendations of the Governors of such States;

(iii) one or more members appointed to represent private organizations, including corporate and individual landowners and land users, that, in the opinion of the Secretary, have an established and recognized interest in the Trail and such appointments shall be made from recommendations of the heads of such organizations: *Provided*, That the Appalachian Trail Conference shall be represented by a sufficient number of persons to represent the various sections of the county through which the Appalachian Trail passes; and

(iv) the Secretary shall designate one member to be chairman and shall fill vacancies in the same manner as the original appointment.]

(3) The National Historic Oregon Trail, a route of approximately two thousand miles extending from near Independence,

Missouri, to the vicinity of Portland, Oregon, following a route as depicted on maps identified as 'Primary Route of the Oregon Trail 1841–1848', in the Department of the Interior's Oregon Trail study report dated April 1977

(4) The National Historic Mormon Pioneer Trail, a trail of approximately one thousand three hundred miles from Nauvoo, Illinois, to Salt Lake City, Utah, following the primary route of the Historic Mormon Trail depicted on a map, identified as, 'Vicinity Map, Mormon Pioneer Trail' in the Department of Interior Morman Trail study report dated June 1978

(5) The National Historic Lewis and Clark Trail, a trail of approximately three thousand seven hundred miles, extending from Wood River, Illinois, to the mouth of the Columbia River in Oregon, following the outbound and inbound routes of the Lewis and Clark Expedition depicted on maps, identified as, 'Vicinity Map, Lewis and Clark Trail' study report dated April 1977

(6) The National Historic Iditarod Trail, a route of approximately two thousand miles extending from Seward, Alaska, to Nome, Alaska, following the routes as depicted on maps identified as 'Seward-Nome Trail', in the Department of the Interior's study report entitled 'The Iditarod Trail (Seward Route) and other Alaskan Gold Rush Trails' dated September 1977;.

(b) The Secretary of the Interior, and the Secretary of Agriculture where lands administered by him are involved, shall make such additional studies as are herein or may hereafter be authorized by the Congress for the purpose of determining the feasibility and desirability of designating other trails as national scenic *or national historic* trails. Such studies shall be made in consultation with the heads of other Federal agencies administering lands through which such additional proposed trails would pass and in cooperation with interested interstate, State, and local governmental agencies, public and private organizations, and landowners and land users concerned. [When completed, such studies shall be the basis of appropriate proposals for additional national scenic trails which shall be submitted from time to time to the President and to the Congress. Such proposals shall be accompanied by a report, which shall be printed as a House or Senate document, showing among other things—] *The studies listed in subsection (c) of this section shall be completed and submitted to the Congress, with recommendations as to the suitability of trail designation, not later than three complete fiscal years from the date of enactment of their addition to this subsection, or from the date of enactment of this sentence, whichever is later. Such studies, when submitted, shall be printed as a House or Senate document, and shall include, but not be limited to:*

(1) the proposed route of such trail (including maps and illustrations);

(2) the areas adjacent to such trails, to be utilized for scenic, historic, natural, cultural, or developmental, purposes;

(3) the characteristics which, in the judgment of the appropriate Secretary, make the proposed trail worthy of designation as a national scenic trail; *and in the case of national historic trails the report shall include the recommendation of the Secretary of the Interior's National Park System Advisory Board as to the*

national historic significance based on the criteria developed under the Historic Sites Act of 1935 (49 Stat. 666; U.S.C. Sec. 461);

(4) the current status of land ownership and current and potential use along the designated route;

(5) the estimated cost of acquisition of lands or interest in lands, if any;

(6) the plans for developing and maintaining the trail and the cost thereof;

(7) the proposed Federal administering agency (which, in the case of a national scenic trail wholly or substantially within a national forest, shall be the Department of Agriculture);

(8) the extent to which a State or its political subdivisions and public and private organizations might reasonably be expected to participate in acquiring the necessary lands and in the administration thereof; [and]

(9) the relative use of the lands involved, including: the number of anticipated visitor days for the entire length of, as well as for segments of, such trail; the number of months which such trail or segments thereof, will be open for recreation purposes; the economic and social benefits which might accrue from alternate land uses; and the estimated man-years of civilian employment and expenditures expected for the purposes of maintenance, supervision, and regulation of such [trail.] *trail;*

(10) the anticipated impact of public outdoor recreation use on the preservation of a proposed national hisetoric trail and its related historic and archeological features and settings, including the measures proposed to ensure evaluation and preservation of the values that contribute to their national historic significance; and

(11) to qualify for designation as a national historic trail, a trial must meet all three of the following criteria:

(A) It must be a trail or route established by historic use and must be historically significant as a result of that use. The routes need not currently exist as a discernible trail to qualify, but its location must be sufficiently known to permit evaluation of public recreation and historical interest potential. A designated trail should generally accurately follow the historic route, but may deviate somewhat on occasion of necessity to avoid difficult routing through subsequent development, or to provide, some route variation offering a more pleasurable recreational experience. Such deviations shall be so noted on site. Trail segments no longer possible to travel by trail due to subsequent development as motorized transportation routes may be designated and marked on-site as segments which link to the historic trail.

(B) It must be of national significance with respect to any of several broad facets of American history, such as trade and commerce, migration and settlement, or military campaigns. To qualify as nationally significant, historic use of the trail must have had a far-reaching effect on broad patterns of American culture. Trails significant in the history of native Americans may be included.

(C) It must have significant potential for public recreational use or historical interest based on historic interpretation and appreciation. The potential for such use is generally greater along roadless segments developed as historic trails, and at historic sites associated with the trial. The presence of recreation potential not related to historic appreciation is not sufficient justification for designation under this category.

(c) The following routes shall be studied in accordance with the objectives outlined in subsection (b) of this section:

(1) Continental Divide Trail, a three-thousand-one-hunderd-mile trail extending from near the Mexican border in southwestern New Mexico northward generally along the Continental Divide to the Canadian border in Glacier National Park.

(2) Potomac Heritage Trail, an eight-hundred-and-twenty-five mile trail extending generally from the month of the Potomac River to its sources in Pennsylvania and West Virginia, including the one-hundred-and-seventy-mile Chesapeake and Ohio Canal towpath.

(3) Old Cattle Trails of the Southwest from the vicinity of San Antonio, Texas, approximately eight hundred miles through Oklahoma via Baxter Springs and Chetopa, Kansas, to Fort Scott, Kansas, including the Chisholm Trail, from the vicinity of San Antonio or Cuero, Texas, approximately eight hundred miles north through Oklahoma to Abilene, Kansas.

(4) Lewis and Clark Trail, from Wood River, Illinois, to the Pacific Ocean in Oregon, following both the outbound and inbound routes of the Lewis and Clark Expedition.

(5) Natchez Trace, from Nashville, Tennessee, approximately six hundred miles to Natchez, Mississippi.

(6) North County Trail, from the Appalachian Trail in Vermont, approximately three thousand two hundred miles through the States of New York, Pennsylvania, Ohio, Michigan, Wisconsin, and Minnesota, to the Lewis and Clark Trail in North Dakota.

(7) Kittanning Trail from Shirleysburg in Huntingdon County to Kittanning, Armstrong County, Pennsylvania.

(8) Oregon Trail, from Independence, Missouri, approximately two thousand miles to near Fort Vancouver, Washington.

(9) Santa Fe Trail, from Independence, Missouri, approximately eight hundred miles to Sante Fe, New Mexico.

(10) Long Trail, extending two hundred and fifty-five miles from the Massachusetts border northward through Vermont to the Canadian border.

(11) Mormon Trail, extending from Nauvoo, Illinois, to Salt Lake City, Utah, through the States of Iowa, Nebraska, and Wyoming.

(12) Gold Rush Trails in Alaska.

(13) Mormon Battalion Trail, extending two thousand miles from Mount Pisgah, Iowa, through Kansas, Colorado, New Mexico, and Arizona to Los Angeles, California.

(14) El Camino Real from St. Augustine to San Mateo, Florida, approximately 20 miles along the southern

boundary of the St. Johns River from Fort Caroline National Memorial to the St. Augustine National Park Monument.

(15) Bartram Trail, extending through the States of Georgia, North Carolina, South Carolina, Alabama, Florida, Louisiana, Mississippi, and Tennessee.

(16) Daniel Boone Trail, extending from the vicinity of Statesville, North Carolina, to Fort Boonesborough, State Park, Kentucky.

(17) Desert Trail, extending from the Canadian border through parts of Idaho, Washington, Oregon, Nevada, California, and Arizona, to the Mexican border.

(18) Dominguez-Escalante Trail, extending approximately two thousand miles along the route of the 1776 expedition led by Father Francisco Atanasio Dominguez and Father Silvestre Velez de Escalante, originating in Santa Fe, New Mexico; proceeding northwest along the San Juan, Dolores, Gunnison, and White Rivers in Colorado; thence weterly to Utah Lake, thence southward to Arizona and returning to Santa Fe.

(19) Florida Trail, extending north from Everglades National Park, including the Big Cypress Swamp, the Kissimme Prairie, the Withlanoochee State Forest, Ocala National Forest, Osceola National Forest, and Black Water River State Forest, said completed trail to be approximately one thousand three hundred miles long, of which over four hundred miles of trail have already been built

(20) Indian Nations Trail, extending from the Red River in Oklahoma, approximately two hundred miles northward through the former Indian nations to the Oklahoma-Kansas boundary line.

(21) Nez Perce Trail extending from the vicinity of Wallowa Lake, Oregon, to Bear Paw Mountain, Montana.

(22) Pacific Northwest Trail, extending approximately one thousand miles from the Continental Divide in Glacier National Park, Montana, to the Pacific Ocean beach of Olympic National Park, Washington, by way of—

(A) Flathead National Forest and Kootenai National Forest in the State of Montana;

(B) Kaniksu National Forest in the State of Idaho; and

(C) Colville National Forest, Okanogan National Forest, Pasayten Wilderness Area, Ross Lake National Recreation Area, North Cascade National Park, Mount Baker, the Skagit River, Deception Pass, Whidbey Island, Olympic National Forest, and Olympic National Park in the State of Washington.

[(d) Within two years of the date of enactment of this subsection, the Secretary of the Interior shall, after full consultation with the Governors of the affected States, the Advisory Council, and the Appalachian Trail Conference, submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs of the House of Representatives, a comprehensive plan for the management, acquisition, development, and use of the Appalachian Trail, including but not limited to, the following items:

(1) specific objectives and practices to be observed in the mangement of the Trail, including the identification of all significant natural, historical, and cultural resources to be preserved; details of anticipated cooperative agreements to be consummated with other entities; and identification of carrying capacity and use patterns of the Trail;

(2) an acquisition or protection plan, by fiscal year, for all lands to be acquired by fee title or lesser interest, along with detailed explanation of anticipated necessary cooperative agreements for any lands not to be acquired; and

(3) general and site-specific development plans, including anticipated costs.]

(d) The Secretary charged with the administration of each respective trail shall, within one year of the date of the addition of any national scenic or national historic trails to the System, and within sixty days of the enactment of this sentence for the Appalachian and Pacific Crest National Scenic Trails, establish an advisory council for each such trail, each of which councils shall expire ten years from the date of its establishment. The appropriate Secretary shall consult with such council from time to time with respect to matters relating to the trail, including the selection of rights-of-way, standards for the erection and maintenance of markers along the trail, and the administration of the trail. The members of each advisory council, which shall not exceed thirty-five in number, shall serve for a term of two years and without compensation as such, but the Secretary may pay, upon vouchers signed by the chairman of the council, the expenses reasonably incurred by the council and its members in carrying out their responsibilities under this section. Members of each council shall be appointed by the appropriate Secretary as follows:

(i) a member appointed to represent each Federal department or independent agency administering lands through which the trail route passes, and each appointee shall be the person designated by the head of such department or agency;

(ii) a member appointed to represent each State through which the trail passes, and such appointments shall be made from recommendations of the Governors of such States;

(iii) one or more members appointed to represent private organizations, including corporate and individual landowners and land users, which in the opinion of the Secretary, have an established and recognized interest in the trail, and such appointments shall be made from recommendations of the heads of such organizations: Provided, That the Appalachian Trail Conference shall be represented by a sufficient number of persons to represent the various sections of the country through which the Appalachian Trail passes; and

(iv) the Secretary shall designate one member to be chairman and shall fill vacancies in the same manner as the original appointment.

(e) Within two complete fiscal years of the date of enactment of this subsection for the Pacific Crest and Appalachian Trails, the responsible Secretary shall, after full consultation with affected

States, and the Appalachian Trail Conference in the case of the Appalachian Trail, submit to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a comprehensive plan for the acquisition, management, development, and use of the trail, including but not limited to, the following items:

(1) specific objectives and practices to be observed in the management of the trail, including the identification of all significant natural, historical, and cultural resources to be preserved, details of anticipated cooperative agreements to be consummated with other entities, and an identified carrying capacity of the trail and a plan for its implementation;

(2) an acquisition or protection plan, by fiscal year, for all lands to be acquired by fee title or lesser interest, along with detailed explanation of anticipated necessary cooperative agreements for any lands not to be acquired;

(3) general and site-specific development plans, including anticipated costs.".

(f) Within two complete fiscal years of the date of enactment of legislation (including this Act) designating a trail as part of the system, the responsible Secretary shall, after full consultation with affected Federal land managing agencies, the Governors of the affected States, and the relevant Advisory Council established pursuant to section 5(d) of this Act, submit to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate, a comprehensive plan for the management, and use of the trail, including but not limited to, the following items:

(1) specific objectives and practices to be observed in the management of the trail, including the identification of all significant natural, historical, and cultural resources to be preserved, details of any anticipated cooperative agreements to be consummated with State and local government agencies or private interests, and for national scenic or national recreational trails an identified carrying capacity of the trail and a plan for its implementation; and

(2) the process to be followed by the appropriate Secretary to implement the marking requirements established in section 7(d) of this Act.

CONNECTING AND SIDE TRAILS

SEC. 6. Connecting or side trails within park, forest, and other recreation areas administered by the Secretary of the Interior or Secretary of Agriculture may be established, designated, and marked as components of a national recreation [or national scenic], *national scenic or national historic* trail. When no Federal land acquisition is involved, connecting or side trails may be located across lands administered by interstate, State, or local governmental agencies with their consent: *Provided*, That such trails provide additional points of public access to national recreation [or scenic trails.], *national scenic or national historic trails.*

[SEC. 7. (a) Pursuant to section 5(a), the appropriate Secretary shall select the rights-of-way for National Scenic Trails and shall publish notice thereof in the Federal Register, together with appropriate maps and descriptions: *Provided*, That in selecting the rights-of-way full consideration shall be given to minimizing the adverse effects upon the adjacent landowner or user and his operation. Development and management of each segment of the National Trails System shall be designed to harmonize with and complement any established multiple-use plans for that specific area in order to insure continued maximum benefits from the land. The location and width of such rights-of-way across Federal lands under the jurisdiction of another Federal agency shall be by agreement between the head of that agency and the appropriate Secretary. In selecting rights-of-way for trail purposes, the Secretary shall obtain the advice and assistance of the States, local governments, private organizations, and landowners and land users concerned.

[(b) After publication of notice in the Federal Register, together with appropriate maps and descriptions, the Secretary charged with administration of a national scenic trail may relocate segments of a national scenic trail right-of-way, with the concurrence of the head of the Federal agency having jurisdiction over the lands involved, upon a determination that: (i) such a relocation is necessary to preserve the purposes for which the trail was established, or (ii) the relocation is necessary to promote a sound land management program in accordance with established multple-use principles: *Provided*, That a substantial relocation of the rights-of-way for such trail shall be by Act of Congress.

[(c) National scenic trails may contain campsites, shelters, and related-public-use facilities. Other uses along the trail, which will not substantially interfere with the nature and purposes of the trail, may be permitted by the Secretary charged with the administration of the trail. Reasonable efforts shall be made to provide sufficient access opportunities to such trails and, to the extent practicable, efforts shall be made to avoid activities incompatible with the purposes for which such trails were established. The use of motorized vehicles by the general public along any national scenic trail shall be prohibited and nothing in this Act shall be construed as authorizing the use of motorized vehicles within the natural and historical areas of the national park system, the national wildlife refuge system, the national wilderness preservation system where they are presently prohibited or on other Federal lands where trails are designated as being closed to such use by the appropriate Secretary: *Provided*, That the Secretary charged with the administration of such trail shall establish regulations which shall authorize the use of motorized vehicles when, in his judgment, such vehicles are necessary to meet emergencies or to enable adjacent landowners or land users to have reasonable access to their lands or timber rights: *Provided further*, That private lands included in the national recreation or scenic trails by cooperative agreement of a landowner shall not preclude such owner from using motor-

ized vehicles on or across such trails or adjacent lands from time to time in accordance with regulations to be established by the appropriate Secretary. The Secretary of the Interior and the Secretary of Agriculture, in consultation with appropriate governmental agencies and public and private organizations, shall establish a uniform marker, including thereon an appropriate and distinctive symbol for each national recreation and scenic trail. Where the trails cross lands administered by Federal agencies such markers shall be erected at appropriate points along the trails and maintained by the Federal agency administering the trail in accordance with standards established by the appropriate Secretary and where the trails cross non-Federal lands, in accordance with written cooperative agreements, the appropriate Secretary shall provide such uniform markers to cooperating agencies and shall require such agencies to erect and maintain them in accordance with the standards established.

[(d) Within the exterior boundaries of areas under their administration that are included in the right-of-way selected for a national recreation or scenic trail, the heads of Federal agencies may use lands for trail purposes and may acquire lands or interests in lands by written cooperative agreement, donation, purchase with donated or appropriated funds or exchange: *Provided*, That not more than twenty-five acres in any one mile may be acquired without the consent of the owner.

[(e) Where the lands included in a national scenic trail right-of-way are outside of the exterior boundaries of federally administered areas, the Secretary charged with the administration of such trail shall encourage the States or local governments involved (1) to enter into written cooperative agreements with landowners, private organizations, and individuals to provide the necessary trail right-of-way, or (2) to acquire such lands or interests therein to be utilized as segments of the national scenic trail: *Provided*, That if the State or local governments fail to enter into such written cooperative agreements or to acquire such lands or interests therein within which two years after notice of the selection of the right-of-way is published, the appropriate Secretary may (i) enter into such agreements with landowners, States, local governments, private organizations, and individuals for the use of lands for trail purposes, or (ii) acquire private lands or interests therein by donation, purchase with donated or appropriated funds or exchange in accordance with the provisions of subsection (g) of this section. The lands involved in such rights-of-way should be acquired in fee, if other methods of public control are not sufficient to assure their use for the purpose for which they are acquired: *Provided*, That if the Secretary charged with the administration of such trail permanently relocates the right-of-way and disposes of all title or interest in the land, the original owner, or his heirs or assigns, shall be offered, by notice given at the former owner's last known address, the right of first refusal at the fair market price.

[(f) The Secretary of the Interior, in the exercise of his exchange authority, may accept title to any nonFederal property within the right-of-way and in exchange therefor he may convey to the grantor of such property any federally owned property under his jurisdic-

tion which is located in the State wherein such property is located and which he classifies as suitable for exchange or other disposal. The values of the properties so exchanged either shall be approximately equal, or if they are not approximately equal the values shall be equalized by the payment of cash to the grantor or to the Secretary as the circumstances require. The Secretary of Agriculture, in the exercise of his exchange authority, may utilize authorities and procedures available to him in connection with exchanges of national forest lands.

[(g) The appropriate Secretary may utilize condemnation proceedings without the consent of the owner to acquire private lands or interests therein pursuant to this section only in cases where, in his judgment, all reasonable efforts to acquire such lands or interests therein by negotiation have failed, and in such cases he shall acquire only such title as, in his judgment, is reasonably necessary to provide passage across such lands: *Provided*, That condemnation proceedings may not be utilized to acquire fee title or lesser interests to more than an average of one hundred and twenty-five acres per mile: *Provided further*, That condemnation is prohibited with respect to all acquisition of lands or interest in lands for the purposes of the Pacific Crest Trail. Money appropriated for Federal purposes from the land and water conservation fund shall, without prejudice to appropriations from other sources, be available to Federal departments for the acquisition of lands or interests in lands for the purposes of this Act.

[(h) The Secretary charged with the administration of a national recreation or scenic trail shall proivde for the development and mainteance of such trails within federally administered areas and shall cooperate with and encourage the States to operate, develop, and maintain portions of such trails which are located outside the boundaries of federally administered areas. When deemed to be in the public interest, such Secretary may enter written cooperative agreements with the States or their political subdivisions, landowners, private organizations, or individuals to operate, develop, and maintain any portion of a national scenic trail either within or outside a federally administered area.

[Whenever the Secretary of the Interior makes any conveyance of land under any of the public land laws, he may reserve a right-of-way for trails to the extent he deems necessary to carry out the purposes of this Act.

[(i) The appropriate Secretary, with the concurrence of the heads of any other Federal agencies administering lands through which a national recreation or scenic trail passes, and after consultation with the States, local governments, and organizations concerned, may issue regulations, which may be revised from time to time, governing the use, protection, management, development, and administration of trails of the national trails system. In order to maintain good conduct on and along the trails located within federally administered areas and to provide for the proper government and protection of such trails, the Secretary of the Interior and the Secretary of Agriculture shall prescribe and publish such uniform regulations as they deem necessary and any person who violates such regulations shall be guilty of a misdemeanor, and may be punished by a fine of not more than $500, or by imprisonment not exceeding six months, or by both such fine and imprisonment.]

ADMINISTRATION AND DEVELOPMENT

Sec. 7. (a) Pursuant to section 5(a), the appropriate Secretary shall select the rights-of-way for National Scenic and National Historic Trails and shall publish notice thereof in the Federal Register, together with appropriate maps and descriptions: Provided, That in selecting the rights-of-way full consideration shall be given to minimizing the adverse effects upon the adjacent landowner or user and his operations. Development and management of each segment of the National Trails System shall be designed to harmonize with and complement any established multiple-use plans for that specific area in order to insure continued maximum benefits from the land. The location and width of such rights-of-way across Federal lands under the jurisdiction of another Federal agency shall be by agreement between the head of that agency and the appropriate Secretary. In selecting rights-of-way for trail purposes, the Secretary shall obtain the advice and assistance of the States, local governments, private organizations, and landowners and land users concerned.

(b) After publication of notice in the Federal Register, together with appropriate maps and descriptions, the Secretary charged with the administration of a national scenic or national historic trail may relocate segments of a national scenic or national historic trail right-of-way, with the concurrence of the head of the Federal agency having jurisdiction over the lands involved, upon a determination that: (i) such a relocation is necessary to preserve the purposes for which the trail was established, or (ii) the relocation is necessary to promote a sound land management program in accordance with established multiple-use principles: Provided, That a substantial relocation of the rights-of-way for such trail shall be by Act of Congress.

(c) National scenic or national historic trails may contain campsites, shelters, and related public-use facilities. Reasonable efforts shall be made to provide sufficient access opportunities to such trails and, to the extent practicable, efforts shall be made to avoid activities incompatible with the purposes for which such trails were established. Other uses along the trail, which will not substantially interfere with the nature and purposes of the trail, and which are currently allowed by administrative regulations, including the use of motorized vehicles, shall be permitted by the Secretary charged with the administration of the trail. The use of motorized vehicles by the general public along any national scenic or national historic trail shall be prohibited within the natural and historical areas of the national park system, the national wildlife refuge system, the national wilderness preservation system where they are presently prohibited or on other Federal lands where trails are designated as being closed to such use by the appropriate Secretary: Provided, That the Secretary charged with the administration of such trail shall establish regulations which shall authorize the use of motorized vehicles when, in his judgment, such vehicles are necessary to meet emergencies or to enable adjacent landowners or land users to have reasonable access to their lands or timber rights: Provided further, That private lands included in the national recreation, national scenic, or national historic trails by cooperative agreement of a landowner shall not preclude such owner from using

motorized vehicles on or across such trails or adjacent lands from time to time in accordance with regulations to be established by the appropriate Secretary.

(d) The Secretary of the Interior and the Secretary of Agriculture, in consultation with appropriate governmental agencies and public and private organizations, shall establish a uniform marker, including thereon an appropriate and distinctive symbol for each national recreation, national scenic, and national historic trail. Where the trails cross lands administered by Federal agencies such markers shall be erected at appropriate points along the trails and maintained by the Federal agency administering the trail in accordance with standards established by the appropriate Secretary and where the trails cross non-Federal lands, in accordance with written cooperative agreements, the appropriate Secretary shall provide such uniform markers to cooperating agencies who shall erect and maintain them in accordance with the standards established by the Secretary."

(e) Where a national historic trail follows existing public roads, developed rights-of-way or waterways, and similar features of man's nonhistorically related development, approximating the original location of a historic route, such segments may be marked to facilitate retracement of the historic route, and where a national historic trail parallels an existing public road, such road may be marked to commemorate the historic route. No land or site located along a designated national historic trail shall be subject to the provisions of section 4(f) of the Department of Transportation Act (49 U.S.C. 1653 (f)) unless such land or site is deemed to be of national historical significance under appropriate historical site criteria such as those for the National Register of Historic Places.

(f) Within the exterior boundaries of areas under their administration that are included in the right-of-way selected for the Appalachian National Scenic Trail and the Pacific Crest National Scenic Trail, the heads of Federal agencies may use lands for trail purposes and may acquire lands or interests in lands by written cooperative agreement, donation, purchase with donated or appropriated funds or exchange.

(g) Where the lands included in Appalachian National Scenic Trail and the Pacific Crest National Scenic Trail right-of-way are outside of the exterior boundaries of federally administered areas, the Secretary charged with the administration of such trail shall encourage the States or local governments involved (1) to enter into written cooperative agreements with landowners, private organizations, and individuals to provide the necessary trail right-of-way, or (2) to acquire such lands or interests therein to be utilized as segments of those trails: Provided, That if the State or local governments fail to enter into such written cooperative agreements or to acquire such lands or interests therein after notice of the selection of the right-of-way is published the appropriate Secretary may (i) enter into such agreements with landowners, States, local governments, private organizations, and individuals for the use of lands for trail purposes, or (ii) acquire private lands or interests therein by donation, purchase with donated or appropriated funds or exchange in accordance with the provisions of subsection (g) of this section. The lands involved in such rights-of-way should be acquired in fee, if other methods of public control are

not sufficient to assure their use for the purpose for which they are acquired: Provided: That if the Secretary charged with the administration of such trail permanently relocates the right-of-way and disposes of all title or interest in the land, the original owner or his heirs or assigns shall be offered, by notice given at the former owner's last known address, the right of first refusal at the fair market price.

(h) The Secretary of the Interior, in the exercise of his exchange authority, may accept title to any non-Federal property within the right-of-way of the Appalachian National Scenic Trail and the Pacific Crest National Scenic Trail and in exchange therefor he may convey to the grantor of such property any federally owned property under his jurisdiction which is located in the State wherein such property is located and which he classifies as suitable for exchange or other disposal. The values of the properties so exchanged either shall be approximately equal, or if they are not approximately equal the values shall be equalized by the payment of cash to the grantor or to the Secretary as the circumstances require. The Secretary of Agriculture, in the exercise of his exchange authority, may utilize authorities and procedures available to him in connection with exchanges of national forest lands.

(i) For the Appalachian National Scenic Trail and the Pacific Crest National Scenic Trail, the appropriate Secretary may utilize condemnation proceedings without the consent of the owner to acquire private lands or interests therein pursuant to this section only in cases where, in his judgment, all reasonable efforts to acquire such lands or interests therein by negotiation have failed, and in such cases he shall acquire only such title as, in his judgment, is reasonably necessary to provide passage across such lands: Provided, The condemnation proceedings may not be utilized to acquire fee title or lesser interests to more than an average of 125 acres per mile.

(j) The Secretary charged with the administration of a national recreation, national scenic, or national historic trial shall provide for the development and maintenance of such trails within federally administered areas or on federally owned lands and shall cooperate with and encourage the States to operate, develop, and maintain portions of such trails which are located outside the boundaries of federally administered areas. When deemed to be in the public interest, such Secretary may enter written cooperative agreements with the States or their political subdivisions, landowners, private organizations, or individuals to operate, develop, and maintain any portion of a national scenic or national historic trail either within or outside a federally administered area.

Whenever the Secretary of the Interior makes any conveyance of land under any of the public land laws, he may reserve a right-of-way for trails to the extent he deems necessary to carry out the purposes of this Act.

(k) The appropriate Secretary, with the concurrence of the heads of any other Federal agencies administering lands through which a national recreation, national scenic or national historic trail passes, and after consultation with the States, local governments, and organizations concerned, may issue regulations, which may be revised from time to time, governing the use, protection, management, development, and administration of trails of the national trails system. In order to maintain good conduct on and along the trails located within federally

administered areas and to provide for the proper government and protection of such trails, the Secretary of the Interior and the Secretary of Agriculture shall prescribe and publish such uniform regulations as they deem necessary and any person who violates such regulations shall be guilty of a misdemeanor, and may be punished by a fine of not more than $500, or by imprisonment not exceeding six months, or by both such fine and imprisonment.

STATE AND METROPOLITAN AREA TRAILS

SEC. 8. (a) The Secretary of the Interior is directed to encourage States to consider, in their comprehensive statewide outdoor recreation plans and proposals for financial assistance for State and local projects submitted pursuant to the Land and Water Conservation Fund Act, needs and opportunities for establishing parks, forest, and other recreation *and historic* trails on lands owned, or administered by States, and recreation *and historic* trails on lands in or near urban areas. *The Secretary is also directed to encourage States to consider, in their comprehensive statewide historic preservation plans and proposals for financial assistance for State, local, and private projects submitted pursuant to the Act of October 15, 1966 (80 Stat. 915), as amended, needs and opportunities for establishing historic trails.*

He is further directed, in accordance with the authority contained in the Act of May 28, 1963 (77 Stat. 49), to encourage States, political subdivisions, and private interests, including nonprofit organizations, to establish such trails.

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AUTHORIZATION OF APPROPRIATIONS

SEC. 10. There are hereby authorized to be appropriated for the acquisition of lands or interests in lands not more than $5,000,000 for the Appalachian National Scenic Trail and not more than $500,000 for the Pacific Crest National Scenic Trail.

From the appropriations authorized for fiscal year 1979 and succeeding fiscal years pursuant to the Land and Water Conservation Fund Act (78 Stat. 897), as amended, not more than the following amounts may be expended for the acquisition of lands and interests in lands authorized to be acquired pursuant to the provisions of this Act:

[(a)(1)] *(a)* The Appalachian National Scenic Trail, not to exceed $30,000,000 for fiscal year 1979, $30,000,000 for fiscal year 1980, and $30,000,000 for fiscal year 1981, except that the difference between the foregoing amounts and the actual appropriations in any one fiscal year shall be available for appropriation in [the subsequent fiscal year] *subsequent fiscal years*. It is the express intent of the Congress that the Secretary should substantially complete the land acquisition program necessary to insure the protection of the Trail within three complete fiscal years following the date of enactment of this sentence. Until the entire acquisition program is completed, he shall transmit in writing at the close of each fiscal year the following information to the Committee on Energy and Natural Resources of the Senate and to the Committee on Interior and Insular Affairs of the House of Representatives:

(A) the amount of land acquired during the fiscal year and the amount expended therefor;

(B) the estimated amount of land remaining to be acquired; and

(C) the amount of land planned for acquisition in the ensuing fiscal year and the estimated cost thereof.

[(2) Until the entire acquisition program is completed, the Appalachian Trail Conference shall transmit a report at the close of each fiscal year to the Committee on Energy and Natural Resources of the Senate and to the Committee on Interior and Insular Affairs of the House of Representatives which shall include but not be limited to comments on—

[(A) the manner in which negotiations for the acquisition program are being conducted for every section of the Trail;

[(B) the attitudes of the landowners with whom negotiations have been undertaken; and

[(C) whether in any case larger interests in land are being acquired than are necessary to carry out the purposes of this Act.

[(b) For the purposes of Public Law 95–42 (91 Stat. 211), the lands and interests therein acquired pursuant to this section shall be deemed to qualify for funding under the provisions of section 1, clause 2, of said Act.]

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Calendar No. 957

95TH CONGRESS
2d Session

SENATE

REPORT
No. 95-1035

JUDICIAL TENURE ACT

JULY 24 (legislative day, MAY 17), 1978.—Ordered to be printed

Mr. DECONCINI, from the Committee on the Judiciary, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany S. 1423]

The Committee on the Judiciary, to which was referred the bill (S. 1423) to establish a Council on Judicial Tenure in the judicial branch of the Government, to establish a procedure in addition to impeachment for the retirement of disabled Justices and judges of the United States, and the removal of Justices and judges whose conduct is or has been inconsistent with the good behavior required by article III, section 1 of the Constitution, having considered the same, reports favorably on S. 1423 with an amendment in the nature of a substitute and an amendment to the title and recommends that the bill, as amended, do pass.

PURPOSE OF THE AMENDMENTS

The amendment in the nature of a substitute and the amendment to the title incorporate several necessary changes in the bill which are responsive to suggestions made to the committee. The changes made in the language of the bill as originally introduced will be explained in detail in the body of the report and in the sectional analysis.

PURPOSE OF THE BILL AS AMENDED

The purpose of the proposed legislation is to establish within the judicial branch of government a system for investigating and resolving allegations that the condition or conduct of members of the Federal judiciary is or has been inconsistent with the good behavior

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required under article III, section 1 of the Constitution of the United States.

An investigation of a complaint filed against a judge of the United States may result in the involuntary retirement, removal or censure of the judge, or dismissal of the case. A complaint filed against a Justice of the Supreme Court may result in a report to the House of Representatives recommending removal or censure or dismissal of the case.

Under this proposal the judicial disciplinary system has three components: (1) a committee made up of judges from each circuit or each of the special national courts—the Court of Claims, the Court of Customs and Patent Appeals, and the Customs Court; (2) the Judicial Conduct and Disability Commission; and (3) the Court on Judicial Conduct and Disability. The chief judge of each of the circuits and each of the three special national courts serves as the presiding officer of the respective committee. The Judicial Conduct and Disability Committee is composed of one member elected from each judicial circuit and one member elected collectively by the judges of the three special national courts. The Court on Judicial Conduct and Disability is composed of seven members of the Judicial Conference of the United States. The presiding officer of the Court on Judicial Conduct and Disability is elected by the Judicial Conference of the United States and selects the other six members.

The Judicial Conduct and Disability Commission, whose principal office shall be located in Washington, D.C., is the central filing point for all complaints. Complaints not initially dismissed by the commission are referred to an appropriate committee of judges. Each committee investigates and recommends to the commission that the complaint be dismissed, that it be further investigated by the commission, or that the committee be granted a reasonable period of time in which to address a matter alleged in the complaint.

Upon receipt of a recommendation of a committee, the commission either dismisses the complaint, initiates a further investigation concerning the nature and existence of grounds for involuntary retirement, removal, or censure, or grants the committee's request for a reasonable period of time in which to address a matter alleged in the complaint. If the commission finds sufficient evidence that the condition or conduct of the judge may be inconsistent with the good behavior requirement of the Constitution, it recommends to the Court on Judicial Conduct and Disability that a formal hearing be held. Any hearing before the court must conform to due process requirements provided under the proposal, the result of which may conclude with an order of involuntary retirement, removal, censure, or dismissal of the case. Either the commission or the judge may seek review of the order by means of a petition for writ of certiorari to the Supreme Court.

Due to the uniqueness of the Supreme Court, as compared to other article III courts, the proposal establishes a slightly different procedure for complaints filed with the commission regarding the conduct of a Justice. Upon filing a complaint with the Judicial Conduct and Disability Commission, the commission can either dismiss the case or initiate an investigation. If the commission finds sufficient evidence that the conduct of the Justice may be inconsistent with the good

behavior requirement of the Constitution, it recommends to the Court on Judicial Conduct and Disability that a formal hearing be held. Upon the holding of a hearing, the court can recommend to the House of Representatives: (1) the censure of any Justice whose conduct is found inconsistent with the good behavior clause; (2) the impeachment of any Justice whose conduct is found to be an impeachable offense; or (3) order the dismissal of the case. Reports to the House of Representatives recommending impeachment or censure are not subject to judicial review.

This judicial disciplinary system proposal is a supplement to, but not a substitute for, the seldom used, lengthy and cumbersome process of impeachment by Congress of a member of the judiciary as set forth in article I of the Constitution of the United States. The legislation is not intended to handle complaints filed by persons relating to the merits of any decision or procedural ruling of a judge or Justice. Complaints relating to the condition or conduct of a member of the judiciary which are not connected with the judicial office or which do not prejudice the administration of justice by bringing the judicial office into disrepute are outside the scope of this legislation. Further, S. 1423, as amended, is not intended in any way, expressingly or implicitly, to interfere with the current operations of the judicial council of each of the circuits or any other similar body in the three special national courts.

This legislation is an exercise of the power of Congress to enact laws which are "necessary and proper" to carry into execution and implement the "good behavior" clause of article III, section 1 of the Constitution of the United States.

Statement

Article III, section 1, of the United States Constitution reads as follows:

> The judicial Power of the United States, shall be vested in one Supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. *The Judges, both of the supreme and inferior courts, shall hold their Offices during good behavior*, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office. [Emphasis supplied.]

Various circumstances and events, including those of recent occurrence, and of historical fact, prompted the introduction of this legislation and its thorough consideration by the Committee on the Judiciary. Throughout the latter part of the sixties, for example, the publicity surrounding the activities of United States District Judge Stephen S. Chandler focused public attention on the issue of removal of federal judges. The controversy culminated in 1965 with an order by the 10th Circuit Judicial Council which found Judge Chandler "either unable or unwilling to discharged efficiently the duties of his office" and which, in effect, stripped him of his judicial function by relieving him of his pending caseload and forbidding new actions to be as-

signed to him. The Council made no specific charges but noted that the judge was a defendant in both civil and criminal litigation, as well as the subject of two applications to disqualify him in litigation in which the judge had refused to disqualify himself. Judge Chandler applied to the Supreme Court for a stay of the Council's order, but the application was denied on the ground that it was interlocutory. *Chandler* v. *Judicial Council*, 382, U.S. 1003 (1966) (Justices Black and Douglas dissenting on the ground that the Council acted without legal authority and in violation of the Constitution.) The constitutional issue surfaced again when Judge Chandler filed a petition for a writ of prohibition and/or mandamus, arguing that the Council usurped the impeachment power which the Constitution exclusively reposed in the Congress. The majority opinion by Chief Justice Burger, however, decided only that the judge had not proved a case for extraordinary relief and thus did not reach the merits of the constitutional question. See, *Chandler* v. *Judicial Council*, 398 U.S. 74 (1970).

More recently, the removal issue received additional publicity when the Department of Justice requested that a United States district court judge be banned from hearing cases which involved the government in any way. In the October 6, 1977, issue of the Washington Post, it was reported that the Department of Justice accused the judge of numerous and detailed abuses of power, including mismanagement of his criminal calendar, disregard of the Federal Rules of Criminal Procedure and Evidence, and a variety of instances of bizarre judicial behavior, such as locking up 25 postal workers because the creaking elevator they used disturbed his courtroom.

The historical facts which prompt consideration of this legislation disclose that in the entire history of the United States, only eight Federal judges and one Justice have been impeached and of that number, only four judges were convicted and removed from office. The last impeachment and conviction of a Federal judge occurred in 1936. In introducing the predecessor to S. 1423 (S. 1110, 94th Cong.), its prime sponsor, Senator Sam Nunn, stated:

> The House impeachment process has generally been lengthy, and Senate impeachment trials have continued for as long as six weeks . . . The average trial has lasted 16 days. This history demonstrates that impeachment is a complex, slow and cumbersome process and is not a real deterrent to misconduct on the bench.

In hearings on S. 1423, Senator Nunn further emphasized that impeachment disrupts the legislative process of Congress, a consideration which becomes more important as the legislative load increases each session. A 1940 report of the Committee on the Judiciary of the House of Representatives made a similar point:

> It is a governmental absurdity that the cumbersome machinery of impeachment must be resorted to in order to procure the ouster of a district or circuit judge.
>
> There must be a logical relationship between the importance and power of the respondent and the taking up of the time of the whole Senate in order to try him. Stability is essential, but there is nothing more ridiculous than the picture of a whole Senate sitting for ten days to determine whether or not a district judge ought to be removed.

The Committee on the Judiciary thus has been persuaded that a need exists to consider legislation which provides, as an alternative and supplement to the impeachment process, a fair and effective procedure for the enforcement of the "good behavior" limitations on the tenure of members of the Federal judiciary. The existence of this need becomes even more apparent as the total number of Federal judges increases in order to meet the rising judicial business of the Nation. Present law authorizes 525 Federal justices and judges. In addition, there are approximately 175 retired or senior judges who continue to serve in a judicial capacity as authorized by law. In the 95th Congress, legislation to create over 140 additional judgeships is being considered. The Federal Judicial Center has predicted that by the year 1990, there will be a need for over 1,000 district judges and over 250 circuit judges. It seems clear to the Committee on the Judiciary that a reliance upon the impeachment process as the only procedure for inquiry into the alleged misconduct of members of a large judicial complement is unrealistic.

Being persuaded of the need for legislation of this kind, the Committee on the Judiciary gave careful consideration to the question of whether the United States, within the framework of the Constitution, possesses the power to enact legislation of this type.

Legal and Constitutional Basis

Constitutional questions have been continuously raised by those who oppose creation of a procedure which would alllow meaningful implementation of the "good behavior" standard. The Committee on the Judiciary believes that the time has come to recognize the practicalities of this issue and to examine it in a broad perspective with reason and logic. Opponents rely upon the assertion that impeachment is the solitary means of removal permissible under the Constitution. The Committee on the Judiciary believes that it is productive to examine exactly what the Constitution says on this issue—and, what it does not say.

The Constitution already states under article I, section 2 of the Constitution of the United States that the House of Representatives is provided with the "sole power of impeachment" and under article I, section 3, the Senate is granted "the sole power to try all impeachments" The Committee on the Judiciary believes that these provisions mean that no other body can bring and try impeachments; however, it does not purport to bar other methods of removal by the other branches. The opponents, utilizing the maxim *expressio unius exclusio alterius* (The expression of one thing is the exclusion of another) argue that the impeachment provision of the Constitution bans all other methods of removal. This rule is employed where there is no other evidence to ascertain the intention of the draftsmen. However, in this instance there are ample examples of the intention of the framers. The First Congress, immediately after the Federal Convention, recognized that the President had an independent power to remove "civil officers" in the executive branch. The Supreme Court ruled in 1897 that the President had the authority to remove a U.S. Attorney despite the fact that the impeachment clause provides for the removal of civil officers.

The Committee on the Judiciary finds both to be examples that impeachment was not the exclusive remedy to remove a civil officer. The question that is logically raised is how can impeachment be exclusive with regard to some "civil officers" such as judges, and not exclusive with regard to others. If the framers had intended impeachment to be the sole method of removal, it would have been a relatively simple matter to employ specific language to that effect.

It is interesting to note that the extreme remedy of impeachment is provided for in article I, the legislative article, and article II, the executive article. The judicial article makes no mention of this procedure. In view of the fact that the debate by the framers on the subject of impeachment focused almost totally on the President and that the term "civil officers" was included almost as an afterthought, one could easily assume that the framers intended to further address the subject of tenure of Federal judges appropriately in article III.

Our Federal system of government is predicated upon the doctrine of separation of powers. The inter-relating system of checks and balances was devised by a group of men concerned by abuses produced through the dominance of the branch of government, the English monarchy, over the remaining two branches. The framers took great care to provide elaborate safeguards to ensure against history repeating itself in the American government by formalizing the separation of powers doctrine. The committee believes that impeachment of Federal judges was authorized, not as an exclusive means of disciplining the judiciary, but rather as one of the limited checks by one branch of government on another. Impeachment was not intended to preclude the judiciary from disciplining itself, rather it was intended as a carefully circumscribed exception to the doctrine of separation of powers to be used in extreme cases of abuse or as a safeguard against judicial branch inaction.

If there is acceptance of the principle that impeachment of Federal judges is a limited authority granted to the legislative branch as part of the system of checks and balances, it seems logical that the framers must have contemplated a disciplinary mechanism that would be available for less than extreme cases of abuse and in the normal course of maintaining the integrity and efficiency of the judicial branch. The Committee on the Judiciary believes that this mechanism was contemplated and the power to enact this mechanism was logically placed in article III of the Constitution of the United States.

A principal witness at the hearings before the Subcommittee on Improvements in Judicial Machinery on S. 1110 the precursor to S. 1423, was Prof. Raoul Berger, the noted constitutional scholar of the Harvard Law School. Professor Berger's statement has been incorporated into the hearing record on S. 1423. His book, "Impeachment: the Constitutional Problems"[2] (Harvard University Press, 1973), is generally recognized as the most definitive text outlining the common law derivations of impeachment. In his testimony, Professor Berger documents the technical legal distinction between impeachment and "good behavior" tenure. His analysis generates the unavoidable conclusion that the grounds for impeachment and the "good behavior" tenure. His analysis generates the unavoidable conclusion that the grounds for impeachment and the "good behavior" requirement are two distinctive standards of conduct and that "good behavior" is a

much more demanding standard than a prohibition against "bribery, treason, or other high crimes and misdemeanors." Not all forms of bad behavior constitute impeachable offenses. Professor Berger states that impeachment, at common law, was a criminal proceeding brought by the House of Commons in the House of Lords on charges of "treason, bribery, high crimes and misdemeanors". Berger further documents the fact that the term, "high crimes and misdemeanors" has a limited technical meaning which refers to serious offenses and does not encompass all forms of misbehavior. As the Committee on the Judiciary of the House of Representatives wrote in their report on the grounds for impeachment during the Nixon impeachment deliberations:

> High crimes and misdemeanors has traditionally been considered a term of art . . . The Supreme Court has held that such terms must be construed, not according to modern usage, but according to what the framers meant when they adopted them.

The framers intentionally retained the limited technical grounds of high crimes and misdemeanors. From the constitutional history of the "high crimes and misdemeanors" provision there is no indication that the framers intended the impeachment provisions to be a complete recitation of the causes justifying removal from office.

In contrast to impeachment, removal for breach of "good behavior" was a judicial, not legislative proceeding. Good behavior tenure was originated in the Act of Settlement in 1700 in an effort to isolate the judiciary from the arbitrary whims of the monarch. Professor Berger points out that, "The words, 'good behavior' in all commissions and grants, public and private, imparted an office or estate for the life of the grantee terminable only by his death or breach of good behavior." This termination was declared by the judiciary in a civil proceeding for forfeiture of the office which was initiated by a writ of scire facias. Its sole objective was to remove the existing officer with no penalties or disqualifications involved. When the framers employed "good behavior", a common law term of ascertainable meaning, with no indication that it was being used in a novel fashion, they must have assumed the inclusion of similar procedures for its implementation. Such an assumption is supported by Madison's explanation to the Virginia Ratification Convention that "where a technical word was used, all the incidents belonging to it necessarily attended".

A "gap" beween the two standards "good behavior" and the grounds for impeachment must therefore exist. To assume otherwise would be to claim that the grounds for impeachment and "good behavior" tenure are the same and thereby render the "good behavior" clause meaningless. The long-standing constitutional principle that no clause in the Constitution is intended to be without effect will not permit this result. Therefore, an alternative method of impeachment to accomplish the removal of Federal judges must have been contemplated by the framers to provide for the removal for misbehavior or disability that was in violation of the "good behavior" standard but was less serious than an impeachable offense. The substance of what constitutes "misbehavior" may be open to interpretation; but it is completely clear that procedurally, "good behavior" was a term involving the judicial process.

In light of the evidence, it certainly cannot be logically maintained that the framers would have rejected a process of judicial removal other than impeachment. The Committee on the Judiciary finds it apparent that the term "good behavior" was employed with the eminently logical intention of providing a disciplinary means, within the judicial branch, in addition to the power authorized to the legislative branch through impeachment. Simple logic indicates that if an office is continued during "good behavior" it is relinquished upon bad behavior, and some means of enforcing that end must be available.

Some commentators assert that the enactment of this legislation would dramatically dilute the independence of our Federal judiciary. The Committee on the Judiciary believes that arguments of this kind are superficial and misleading. Judicial independence, a principle which is a precondition to an effective system of justice, is historically referred, not to the independence of judges from one another, but rather to the independence of the judiciary as an institution from other branches of government. The intention of the framers was to avoid the experiences of the British who saw the judiciary totally dominated by the king. Professor Berger noted that, "all the remarks in the several conventions that bear on judicial independence, so far as I could find, referred to freedom from legislative and executive encroachments. No one suggested that judges must be immune from traditional judicial conduct." The assertion that a disciplinary mechanism, totally restricted within the judiciary, infringes on judicial independence simply does not make sense. Concluding his argument on this point, Professor Berger states that the repugnance to judicial removal is a strange position to adhere to especially in light of the recent Nixon proceedings which clearly demonstrated how difficult it is to remove partisanship from an impeachment proceeding. Furthermore, Berger argues that it seems much more appropriate that a judge have his day in court before his peers who are trained in making judgments in such matters than to resort to the political passions that more likely would be found in the Congress.

Since it has long been recognized that every word in the Constitution must be given effect, Berger argues that under the "necessary and proper" clause, the so-called elastic clause found in article I, section 8, the Congress has the power to provide a procedure for judicial enforcement of the limitation "during good behavior" upon the judicial office.

Professor Berger has also developed an argument concerning the issue of good behavior as it relates to the involuntary retirement of a judge. Basically, he argues that a finding of mental or physical disability seems to be within the common law since one who is disabled cannot "diligently conduct" his office. Even Alexander Hamilton, the defender of the Federal judiciary, stated that insanity was a virtual disqualification. According to Berger, mental or physical disability stand together. Further, he concludes that habitual intemperance constitutes a breach of "good behavior" since it likewise interferes with the "diligent conduct" of an office.

The Department of Justice has prepared a statement regarding the constitutionality of the provision in S.1423 relating to the removal and involuntary retirement of Federal judges. The statement which appears immediately after this part of the report is summarized as follows:

(1) Impeachment is not the only constitutionally permissible method of Federal judges; therefore, judicial procedures for removal as in S. 1423, as amended, are permissible.

(2) A forceful argument is made that a compulsory retirement system complies with the requirements of the constitutional provision for tenure during good behavior, if there is a provision for the continuation of the judge's salary and for an enforceable right to perform such judicial functions as the retired judge is willing and able to perform.

Since the legal and constitutional questions raised by S. 1423, as amended, can ultimately be answered only by the Supreme Court of the United States, it would unduly extend the Committee of the Judiciary's report to set forth all supporting and opposing views and all historical precedents. The Committee on the Judiciary believes its proper function to be that of making a legislative judgment as to whether S. 1423, as amended, sets forth a "proper" procedure for obtaining a judicial determination of a breach of good behavior and whether it is "necessary" to do so in order to carry into execution of the Constitution.

It is important to note that Senators from time to time receive letters from constituents, disgruntled litigants, and from attorneys containing various allegations concerning Federal judges. That these communications are addressed to Senators is evidence of the fact that no system now exists through which members of the public can make complaints about the conduct of Federal judges. It seems clear that such complaints should neither be directed to, nor investigated by Members of the Senate. Yet it seems reasonable that the Federal Government should have a system whereby complaints about judges can be filed with a body that has the means and ability to investigate well-founded complaints.

The Committee on the Judiciary is also mindful of the fact that the creation of a judicial disciplinary system will benefit the judges themselves. Mr. John A. Sutro, who appeared on behalf of the American Bar Association at the hearings before the Subcommittee on Improvements in Judicial Machinery emphasized that S. 1423 would serve to shield judges from unwarranted accusations and unfounded complaints which are often due to misconceptions about the judicial process. He explained that in California, the Commission on Judicial Qualifications, which receives and screens complaints against the States court judges, has both protected the judges and strengthened public confidence in the judiciary. Mr. Sutro presented the following statistical information on the disposition of complaints by the California commission:

> Since the commission came into being in 1961, and through December 1976, it has received 2,437 complaints. Of those 1,768 were unfounded or not within the jurisdiction of the commission. In such cases, a letter with a short explanation is sent to the complainant and the file closed. Confidentiality protects the reputation of the judge against irresponsible accusations. Of the 669 complaints which were deemed worthy of investigation only 440 were found to warrant contacting the judge against whom the complaint had been made.

> When a judge is contacted, he is advised of the nature of the complaint and given the opportunity to respond. In a very substantial majority of these cases there were no further proceedings for any of a number of reasons, e.g., the judge gave the commission a satisfactory explanation, the commission was assured that the judge had corrected the error of his ways, or the commission was satisfied that it would be unable to prove the facts on which the complaint was based.

According to Mr. Sutro, this system has met the approval of a vast majority of California judges.

Forty-seven States, the District of Columbia, and Puerto Rico have adopted some system for handling allegations of misconduct on the part of judges. The record of hearings before the Subcommittee on Improvements in Judicial Machinery on the predecessor to S. 1423 (S. 1110, 94th Congress), at page 172, contains a table summarizing the various methods of reviewing judicial conduct in effect in most of these States.

The proposed Judicial Tenure Act, S. 1423, as amended, which creates a similar system for the Federal judiciary, has been endorsed by several organizations and individuals. These include, but are not limited to, the endorsement in total or principle by the Judicial Conference of the United States, the American Bar Association, the Department of Justice, the American Judicature Society, the American Association of Attorneys General, Attorney General Griffin B. Bell, Senator Sam Nunn, former Senators Roman Hruska and Joseph Tydings, other law scholars, and many Federal jurists.

In opposition to the Berger view are other respected legal scholars, including Professor Philip Kurland, who contends that impeachment is the sole means of removing a Federal judge from office. A note in 85 Yale L.J. 706 (April, 1976), discusses the question of whether mental or physical disability of a judge is ever a ground for impeachment. It also contains a list of legal articles on the question of removal of Federal judges. A concise summary of the constitutional arguments is presented in the New York City Bar Association's Federal legislation report, "The Removal of Federal Judges Other Than by Impeachment," (April 1, 1977). A discussion and factual summary of all judicial impeachment proceedings since adoption of the Constitution is contained in the article, "Impeachment of Federal Judges: An Historical Overview," (1970), Thompson and Pollitt, 49 North Carolina L.R. 87.

In its consideration of this legislation the Committee on the Judiciary considered whether there was sufficient instances of a judge's "bad behavior" to justify approval of this legislation. Rather than attempt to compile a list of such instances, the Committee on the Judiciary took cognizance of published literature and newspaper accounts which discussed various situations involving some members of the Federal judiciary. The Committee on the Judiciary also considered that each body of Congress has the power to discipline its own Members and has done so when required by the facts in a particular case. Moreover, the executive branch possesses and exercises a similar power over its officers who serve at the pleasure of the President. Even the civil service system has provisions for discipline and dismissal of employees on the civil serv-

ice list for misconduct. (See 5 U.S. Code sec. 7501). Enactment of S. 1423, as amended, would establish a workable judicial disciplinary and disability system for the Federal judiciary.

Statement of the Department of Justice

I. Removal of a judge for failure to comply with the constitutional requirement of good behavior

Tenure of an office during good behavior has its roots in the England of the Middle Ages. It constitutes a grant of an office for life terminable upon breach of the condition that the incumbent behave himself well.[1] The condition was breached by malfeasance in office or failure to perform the duties of the office.[2] The question whether the condition was breached and the office forfeited was traditionally determined in judicial proceedings in the nature of *scire facias*.[3]

Originally tenure during good behavior was conferred on what we would now call administrative officers and on some judges of the lower courts. Thus, since the end of the 15th century, the Barons of the Exchequer who were primarily financial officers held office during good behavior.[4]

The judges of the Courts of the King's Bench and Common Pleas, who are the closest to our Federal judiciary, however, were granted commissions at the King's pleasure until the middle of the 17th century.[5] From 1641 until 1669 the judges of all three Royal Courts were appointed to hold office during good behavior.[6] From 1669 on, Charles II again began to appoint judges to hold office during the King's pleasure.[7] The interference of the late Stuarts with the administration of justice was notorious.[8] One of the principal reforms of the Glorious Revolution of 1688–89 was the reinstitution of the judicial good behavior tenure, first as a matter of grace,[9] and, as the result of the Act of Settlement of 1701, as a matter of law, beginning with the accession of the House of Hanover in 1714.

Article III, section 1 of the Constitution provides that the judges of the Federal courts shall hold office during good behavior. The article, however, does not specify the procedure for the removal of a judge who violates that condition of his tenure. Article II, section 4, of the Constitution, of course, provides that—

> The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other High Crimes and Misdemeanors.

There is nothing on the face of that section to indicate that it was designed to constitute the exclusive method for the removal of judges.

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[1] 1 Coke *Litt* 429; see also *Matter of Hennen*, 13 Pet. 230, 258.
[2] Earl of Shrewsbury's Case, 9 Coke 46b, 50a; 77 Eng. Rep. 798, 804 (1610).
[3] Chitty, "Law of the Prerogative of the Crown," p. 87.
[4] McIlwain, "The Tenure of English Judges," 7 American Political Science Review 217, 220.
[5] McIlwain, op. cit. at 221–223; 4 Coke Inst. 117.
[6] Ibid.; Foss, "Judges," vol. 6, p. 210.
[7] Foss, op. cit. vol. 7, p. 4; 1 Siderfin 408; 82 Eng. Rep. 1185.
[8] Story, "Commentaries on the Constitution," vol. 2, § 1608; "McAllister v. United States," 141 U.S. 174, 194 (1891), (dissenting opinion of Field, J.); McIlwain, op. cit. at 223–224.
[9] Foss, "Judges," 291; Macauley, "History of England" (1856 ed.) vol. 3, pp. 20–21; McIlwain, op. cit. p. 224.

It certainly is not the exclusive method for the removal of nonjudicial civil officers, other than the President and Vice President, who have been found guilty of treason, bribery, and other high crimes and misdemeanors. Moreover, the terms "treason," "bribery," "and other high crimes and misdemeanors" are narrower than the malfeasance in office and failure to perform the duties of the office, which may be grounds for forfeiture of office held during good behavior.

Nevertheless the question whether impeachment is the only method envisaged by the Constitution for the removal of judges has been debated ever since the Federal Convention completed its draft of the Constitution. The basis for the controversy is presumably Alexander Hamilton's statement in The Federalist No. 79 that impeachment was the only provision for removal "which we find in our own Constitution in respect to our own judges." Alexander Hamilton is, of course, rightly respected as an interpreter of the Constitution. It appears, however, that in the particular area of the power to remove Federal officers Hamilton has not been infallible. Thus, in The Federalist No. 77, he expressed the view that officers appointed by and with the advice and consent of the Senate could be removed only with the consent of that body. The Great Debate of 1789 proved that he was wrong on this score and that such officers could be removed by the President alone. And, as a letter written by James Madison in 1829 indicates, Hamilton changed his view of the Constitution on this point.[10]

During the first formative years following adoption of the Constitution there occurred at least three incidents which indicated that Hamilton's views as to the exclusive nature of impeachment were not shared by his contemporaries. The First Congress not only rendered the decsion of 1789 with respect to the removal of Presidential appointees. It also provided in section 21 of the act of April 30, 1790, that a judge convicted of accepting a bribe "shall forever be disqualified to hold any office of honour, trust or profit under the United States." This statute thus had the effect of removing a judge upon a criminal conviction and without impeachment proceedings. It was passed by a Congress many Members of which had attended the Constitutional Convention, as had President Washington who approved it. Alexander Hamilton, then serving as Secretary of the Treasury, apparently raised no objection to the bill.

The second pertinent incident occurred in 1796. A petition presented to Congress by inhabitants of the Northwest Territory lodged serious charges against a territorial judge, who held office during good behavior. The House of Representatives asked Attorney General Lee for his advice on the proper method of proceeding against the judge. The Attorney General responded that the charges were so serious that if the judge were convicted, "a removal may and ought to be a part of punishment." He continued that since judges held office during good behavior, they could not be removed until lawfully convicted of some official misconduct. Such conviction could be obtained in three ways: upon information, upon indictment, or upon impeachment before the Senate. He considered impeachment to be generally the best suited, but not the exclusive, method of trying judges. Here he felt that impeach-

[10] Letter from James Madison to W. C. Rives, 4 "Letters and Other Writings of James Madison," p. 3 at 5.

ment was not advisable since the witnesses resided about 1,500 miles from the seat of the Government, and therefore recommended that the trial be held before the supreme court of the Territory upon either information or indictment.[11] The House committee in charge of the matter submitted a report concurring in that recommendation.[12]

The third pertinent incident relates to President Adams' Circuit Court Act of 1801 and its repeal under the Jefferson administration in 1802. Section 4 of the Judciary Act of 1789 established circuit courts, but did not provide for circuit judges; instead, the circuit courts were held by panels composed of Supreme Court Justices and district judges. President Adams' Circuit Court Act of 1801 provided for the appointment of specific circuit judges. However, in view of the unpopularity of that statute with President Jefferson's Republican Party, the 1801 act was repealed in 1802 with the intended effect that the circuit judges' commissions terminated when their judicial offices were abolished.[13]

During the debates, the Federalists argued that judges could be removed from their judicial positions only by way of impeachment and that no other method was constitutionally permissible. On that occasion Senator Stone carefully analyzed the pertinent provisions of the Constitution and concluded to the satisfaction of the Senate that under the constitutional plan impeachment was not the only method for terminating judicial tenure held during good behavior.[14] As a result of the repeal, the commissions of the circuit judges appointed under the 1801 act were terminated when the 1802 repeal legislation went into effect, and the circuit courts were again comprised of Supreme Court Justices and district judges until the circuit courts of appeal were established in 1891.

During the first 13 years under the Constitution there were thus three instances in which the impeachment provisions of the Constitution were not considered to be the exclusive method for ending a judicial tenure. During the following 158 years, Congress took no new action in this field. Nevertheless, the provision of the 1790 act calling for the disqualification of a judge as a consequence of a criminal conviction for bribery was incorporated in the Revised Statutes, the Criminal Code of 1909, the 1948 enactment of title 18, United States Code, into positive law, and the 1962 revision of the bribery and conflict-of-interest provisions of that title.[15] The Senate report on the 1962 act specifically refers to the disqualification of judges as the result of criminal conviction.[16]

Moreover, the first 13 years of experience under the Constitution were important years in determining the meaning of that document. The Supreme Court so stated in *Stuart* v. *Laird* (1 Cranch 299 (1803)). That case arose under the 1802 act which repealed the Circuit Court Act of 1801. Stuart, the plaintiff in error, sought the review of a judgment rendered against him by a circuit court composed under the 1802 act of a district judge and Chief Justice Marshall sitting as a circuit

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[11] Hinds, "Precedents of the House of Representatives," vol. 3, pp. 982–983; "American State Papers" (Misc.), vol. I, p. 151.
[12] Hinds, ibid.; Annals of Congress, 4th Congress, 2d sess. col. 2320.
[13] Frankfurter and Landis, "The Business of the Supreme Court," pp. 26–28, fn. 75.
[14] Annals of Congress, 7th Cong., 1st sess., col. 72.
[15] 18 U.S.C. 201(c)(e); 203.
[16] S. Rept. 2213, 87th Cong., 2d sess. pp. 7–8.

justice. One of the assignments of error was that Justices of the Supreme Court were ineligible to sit as circuit judges because they had not been appointed to that office, and held no commission to that effect.

The Court could have taken the position that the reinstatement of the old circuit courts was an integral part of the scheme to remove the circuit judges appointed under the 1801 act in violation of the good-behavior clause of the Constitution. Instead the Court upheld the service of Supreme Court Justices on the circuit courts on the ground that—

> Practice, and acquiescence under it, for a period of several years, commencing with the organization of the judicial system, affords an irresistible answer, and has indeed fixed the construction. It is a contemporary interpretation of the most forcible nature. This practical exposition is too strong and obstinate to be shaken or controlled. Of course, the question is at rest, and ought not now to be disturbed." 1 Cranch, at 308.

This practical exposition test can also be applied to the question whether under the Constitution impeachment is the exclusive method for the removal of judges. Three times during those formative years the Constitution was interpreted as permitting other methods of removal. For the purpose of determining the meaning of the Constitution, the action taken and the experiences gathered during the years immediately following the adoption of the Constitution balance if they do not outweigh the inertia of the following decades.

Our conclusion is that in the Constitution plan, impeachment was not intended to constitute the exclusive method for the removal of judges who violate the good behavior requirement.

As mentioned before, historically the forfeiture of an office held during good behavior was determined in judicial proceedings. Nothing indicates that the Constitution intended to change this rule of law. The argument has been made that the forfeiture of an office held during good behavior by way of *scire facias* was an obscure common-law procedure of which the Founding Fathers were unaware. A perusal of the papers of John Adams, however, indicates that American lawyers of the second half of the XVIIIth century were well informed of the intricacies of common-law procedure.[17] Indeed, Blackstone states that the writ of *scire facias* was the remedy to revoke a royal patent where the patentee had committed an act that constituted a forfeiture of the grant.

Attorney General Lee's opinion indicates that he was fully aware of this legal background. He regarded impeachment as a "most solemn" trial before the Senate, but essentially a judicial proceeding.

The Department of Justice therefore agrees with the theory contained in S. 1423, that under the Constitution impeachment is not the exclusive method for the removal of judges, and that judicial proceedings may be utilized to determine whether a judge has violated the requirement of good behavior. Although we have submitted elsewhere some suggestions for revision in the scheme contained in S. 1423, these are matters which arise out of the mechanics of this particular bill, rather than out of the idea itself.

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[17] See e.g. Legal Papers of John Adams (1865) pp. 263–264; "Diary and Autobiography of John Adams" (1861) 90.

For the record, the Department believes that the procedural scheme contained in S. 1423 mets Constitutional requirements for this kind of legislation. Specifically:

(1) Provision for an investigatory body composed of judges;

(2) Decision on removal by the Judicial Conference, or a panel thereof, designated for that purpose as a court of the United States.

(3) Possibility of review by the Supreme Court.

We would note at the same time that there may be other alternative procedures which would also meet the requirements of the Constitution. One of the essential ingredients in any acceptable procedure is that it be judicial.

Precedents for a special court of the United States staffed with judges of other federal courts are the former Commerce Court and the Emergency Court of Appeals. Moreover, it was established in *Glidden Co.* v. *Zdanok*, 370 U.S. 530 (1962), that the tenure requirements of article III, section 1 of the Constitution are met if a court of the United States is staffed with judges serving during good behavior; it is not required that their appointment to the particular court be for service during good behavior.

2. Involuntary Retirement of Judges for Disability

Existing law deals with two aspects of judicial disability. A disabled judge may retire voluntarily (28 U.S.C. 372(a)). In that event he becomes a senior judge and can perform judicial duties only by designation and assignment (28 U.S.C. 294(b), (e)). If a disabled judge does not retire voluntarily, the proper dispatch of business may suffer and require the appointment of an additional judge. In that event, 28 U.S.C. 372(b) now authorizes the Judicial Council of the Circuit to certify these facts to the President, who thereupon may appoint an additional judge.

S. 1423 would provide that a disabled judge can be involuntarily retired if found by the Court on Judicial Discipline to have a permanent mental or physical disability which renders that judge unable to discharge efficiently one or more of the critical duties of the office.

It is the Department's belief that in order to avoid an overly broad incursion into the principal of judicial independence during "good behavior," a provision should be inserted into S. 1423 which gives an involuntarily retired judge an enforceable right to be assigned such judicial duties as he or she is willing and able to perform. The legislation would then, in effect, provide that a disabled judge could be involuntarily given the status of senior judge.

These provisions of the bill manifestly touch on an extremely delicate area. We believe, however, that if the suggested addition were made, the bill would reconcile in a constitutionally permissible manner the divergent interests of the public in an efficient and at the same time independent judiciary and those of the judiciary in protection against unwarranted interference with its activities as well as against the vicissitudes of illness and old age.

For a number of reasons, the problem of disabled judges holding office during good behavior assumed serious proportions only at the time of the Constitutional Convention. Hence, there is no historical

experience and no precedent which could indicate to us whether the procedures set forth in compulsory retirement provisions conform with the general Constitutional plan.

As was pointed out earlier, tenure during good behavior was by no means rare in England; it goes back to the Middle Ages. It could be assumed, therefore, that there would be a large body of law and experience dealing with the problem of superannuated officeholders under that tenure. That this is not the case, however, may be due to the existence of the deputy system under which officers other than judges of courts of record could appoint deputies for the performance of their official duties.[18] If the officeholder became incapacitated he could appoint a deputy, and if the latter became disabled another one could be substituted.

It was also mentioned before that non-attendance of an office held during good behavior resulted in its forfeiture. This, however, was the case only if the non-attendance was willful or the result of voluntary negligence.[19] Hence, there are a few cases suggesting that nonperformance of the duties of an office due to illness did not result in its forfeiture,[20] and that old age was an honor and not a reason for the removal of an officer.[21] Another case in this area may be found in Coke's reports where Queen Elizabeth authorized a sergeant at arms in Chancery to absent himself from his office on the basis of what appears to have been a doctor's certificate.[22]

These cases, of course, merely hold that disability was no ground for the removal of a person holding office during good behavior. They have no bearing on the practical problems arising from the disability of such officers, especially of those who could not appoint deputies. Again for historical reasons this problem arose only slowly and came to the fore only at the time of the Constitutional Convention.

While the judges of the Courts of King's Bench and Common Pleas held good behavior commissions during the middle of the XVII century and again since 1689, those commissions expired upon the death of the authority which had issued them.[23] This rule was abrogated only in 1760.[24] Until then a new King upon his accession always had the option of not renewing the commissions of incapacitated judges.

Dr. Johnson was aware of the potential impact of the 1763 statute on the superannuation of the Bench. He felt that it was a mistake because:

> A judge may become froward from age. A judge may grow unfit for his office in many ways. It was desirable that there should be a possibility of being delivered from him by a new King.[25]

A survey of the biographies of judges who served from 1689 until 1789 tends to indicate that the problem of judicial disability became serious only about 1770, at a time when the colonies began to loosen

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[18] See e.g. 1 Holdsworth, History of English Law, 257–258; Y. B. 9. H. 4, 30 31a.
[19] Sir Reynel's Case, 9 Coke 95a, 99a–b; 77 Eng. Rep. 871, 878 (1612); *Rex* v. *Wells Corporation*, 4 Burrows 1899, 2004–2007; 98 Eng. Rep. 41, 44–46 (1767).
[20] *Rex* v. *Rook*, 79 Eng. Rep. 1024 (1639).
[21] Hazzard's Case, 2 Rolle 11, 81 Eng. Rep. 625, 626 (1618).
[22] Mark Steward's Case, 9 Coke 99b, 102a; 77 Eng. Rep. 878, 881 (1579).
[23] 2 Lord Raymond 747.
[24] 1 Geo. III c. 23.
[25] Boswell, "Life of Samuel Johnson," LLD, April 14, 1775.

their ties with Great Britain. The most serious case, which occurred at the time of the Constitutional Convention, was that of Lord Mansfield. As a result of illness he did not sit on the bench for the 2 years preceeding his retirement in 1788.[26] About 10 years later Parliament considered the problem sufficiently serious to provide for a permanent judicial pension system.

This limited British experience with the problem of the incapacitation of judges serving during good behavior is the background against which we must gage Alexander Hamilton's statement in The Federalist No. 79. There he explains why the Constitution fails to provide for the removal of judges on the ground of disability. It will be noted that Mr. Hamilton speaks of the removal, not the retirement of judges. Hamilton lists three grounds for this omission. First, the evaluation of a person's mental facilities was so vague a science that it would easily be abused to undermine the independence of the judiciary. Second, persons rarely "outlive the season of their intellectual vigor." Third, the young republic was not likely to pay any pensions, and it would be inhumane to remove judges from their position on account of the infirmities of old age on the basis of an imaginary danger of a superannuated bench.

Hamilton's reasoning, of course, is in full agreement with the then prevailing law, that nonperformance of an office due to illness or old age was no ground for removal. Nevertheless, he did feel that insanity was a ground for removal and the first judge to be impeached, Judge Pickering, probably was insane.[27]

Circumstances and attitudes have changed since Hamilton's times. We would no longer impeach a judge for insanity. Moreover, psychiatric and medical development have made the diagnosis of mental disabilities more certain. At the same time they have increased the instances in which persons outlive the season of their intellectual vigor. With the addition of the provision suggested above, the proposed legislation would not seek to remove the judge and expose him to an uncertain financial fate. It would rather continue the payment of his emoluments and permit him to perform such judicial duties as he is willing and able to perform.

In our view this solution is within the framework of the good behavior clause. It preserves the judical independence which the good behavior clause guarantees. At the same time it serves the humanitarian common law principles underlying Hamilton's argument that the infirmities of old age shall not result in the forfeiture of an office.

Sectional Analysis

SECTION 1

Section 1 of the bill provides that the bill may be cited as the Judicial Tenure Act.

SECTION 2

Section 2 of the bill amends title 28, United States Code, by adding a new chapter immediately after chapter 17. Chapter 18 is entitled,

[26] Fox, Biographia Juridica, s.v. William Murray, Earl of Mansfield; Holdsworth, History of English Law, vol. 12, pp. 476–477.
[27] Carpenter, *Judicial Tenure*, 114–119.

"Procedures for Involuntary Retirement, Removal, or Censure." Chapter 18 includes 12 sections which are analyzed as follows:

Section 381. Judicial Conduct and Disability Commission; establishment

Proposed section 381(a) creates the Judicial Conduct and Disability Commission. The commission is directed to further the honest, impartial, and efficient administration of justice in the courts of the United States in accordance with duties imposed upon it by law. The courts of the United States, as specified in this section, include the courts of appeals, district courts, the Court of Claims, the Court of Customs and Patent Appeals, and the Customs Court. Generally, the commission screens out frivolous or unfounded complaints filed against members of the judiciary and investigates remaining complaints to determine whether sufficient evidence of misconduct or disability exists to warrant a formal hearing before the Court on Judicial Conduct and Disability.

The Judicial Conference of the United States is authorized and directed to appoint and fix the compensation of an executive director of the Judicial Conduct and Disability Commission. The executive director is subject to removal, for cause, by the Judicial Conference. In fixing the compensation of the executive director, the Judicial Conference may not exceed the lowest annual rate of pay payable for grade 16 of the General Schedule prescribed under section 5332 of title 5, United States Code, and the executive director will be eligible for pay increases as authorized by section 5335 of title 5, United States Code. Upon receiving the approval of the commission, the executive director may appoint additional necessary employees to assist with the work of the commission. Prior to hiring additional employees, the executive director must obtain the approval of the Director of the Administrative Office of the U.S. Court. The executive director and his employees shall be located in the Judicial Conduct and Disability Commission's principal office located in Washington, D.C.

The Committee on the Judiciary intends the executive director to act as the administrator and representative of the commission in matters imposed upon it under the law. It is further contemplated that the number of other employees needed to assist in the work of the commission will be kept quite small, and will probably consist only of an executive director and one or two support personnel at the outset. The State of California, which has approximately 1,200 judges, provides a staff of only two persons to assist the California Commission on Judicial Qualifications. Currently, the Federal courts have slightly more than half of the total number of California judges. Thus, the initial staff requirements of the Judicial Conduct and Disability Commission are expected to approximate the California system.

Proposed section 381(b) is divided into two paragraphs. Paragraph (1) states that the Judicial Conduct and Disability Commission is composed of one judge from each judicial circuit and one judge who has been selected collectively by the judges of the three special national courts—the Court of Claims, the Court of Customs and Patent Appeals, and the Customs Court. Only judges who are in regular active service or senior status are authorized to elect a member of the commission and only such judges are entitled to serve as members of the commission.

The Committee on the Judiciary has been persuaded that better representation will be achieved if both judges in regular active service and senior status have an opportunity to be elected and take part in the election of a member to the Commission. Judges in senior status currently provide an invaluable service to the Federal court system and their inclusion with regard to their participation under this act will be of great assistance to insure a more representative body.

Although judges of the territories participate in the judicial conferences of their respective circuits, paragraph (1) provides that they may neither be elected nor elect a member of the commission. The Committee on the Judiciary decided to exclude territorial judges since they serve fixed terms and do not hold their office during good behavior as do article III judges.

Paragraph (1) additionally requires that a judge who is a member of the Judicial Conference of the United States may not serve as a member of the Judicial Conduct and Disability Commission simultaneously. The Committee on the Judiciary believes that a possible conflict-of-interest situation could be avoided if members of the Judicial Conference of the United States, from which members of the Court on Judicial Conduct and Disability are selected, could not simultaneously be members of the Commission, since the Commission may eventually present a case in a hearing before the court.

Further, paragraph (1) directs the elected members of the Judicial Conduct and Disability Commission to elect one of its members as its chairman.

Paragraph (2) authorizes the chairman to appoint a panel of seven judges to carry out the duties of the Commission. If the panel is appointed, a concurrence of four of its members, which constitutes a majority, is authorized to act on behalf of the Commission.

As originally introduced, S. 1423 called for the investigative body, now defined in the amended bill as the Judicial Conduct and Disability Commission, to consist of 14 members—one from each circuit and one from each of the special national courts. The Committee on the Judiciary has been persuaded that a 14-member Commission would be too cumbersome and inefficient in its operation to successfully accomplish its purpose as defined in the present legislation. Fewer members, while reducing the cost of operation and judicial manpower and time, will not cause a loss of efficiency or infringe upon due process rights. The Committee on the Judiciary has determined that by reducing the number of members of the Commission from 14 to 12 and by including the provision allowing the Chairman an option to appoint a seven-member panel to carry out the duties of the Commission, the burden on available judicial resources will be eased and the Commission will be allowed greater flexibility in carrying out its duties.

The Committee on the Judiciary believes that the procedure for disciplinary review of the official conduct of judges is a fair and proper procedure whereby the judicial branch of the Federal Government can keep its own house in order. While some of the State disciplinary review systems have included laymen or nonjudicial members, this usually has required an amendment of the State constitution. Further, the Committee on the Judiciary believes that the judges themselves are in the best position to determine whether the condition or conduct of

members of the judiciary is inconsistent with the good behavior requirement of article III, section 1, of the Constitution of the United States.

Proposed section 381(c) is divided into two paragraphs. Paragraph (1) provides that members of the Judicial Conduct and Disability Commission shall each be elected to a 3-year term except, when the Commission is initially selected, four of the members will serve 2-year terms and four of the members will serve 1-year terms. The Chairman shall decide who shall serve each of these terms. This provision will allow for subsequent elections to be staggered so that all of the members' terms will not expire in the same year. The term of any member shall be extended until a successor has been selected to replace him. Paragraph (1) further provides that a judge may serve any number of terms on the Commission as long as the terms are not consecutive.

The Committee on the Judiciary has been persuaded that the provision for 3-year terms, and the staggered and nonconsecutive-terms provisions will provide for continuity and uniformity in the actions taken by the Commission.

Paragraph (2) provides that the term of a member of the Commission automatically expires when that member resigns as a judicial officer, is involuntarily retired under proposed section 372(c) of title 28, United States Code, or is removed or censured under proposed section 388 of title 28, United States Code.

Proposed section 381(d) specifies that the performance of the duties of the Judicial Conduct and Disability Commission constitute official business for the purposes of section 456 of title 28, United States Code, and allows the judges who are members of the Commission to be reimbursed for traveling expenses relating to the official business of the Commission.

Section 382. Committees; selection of members; receipt of complaints

Proposed section 382 creates a committee of judges who are in regular active service or senior status, for each judicial circuit and each of the three special national courts, i.e., the Court of Claims, the Court of Customs and Patent Appeals, and the Customs Court. The function of each committee is to investigate complaints that have been forwarded from the Judicial Conduct and Disability Commission and, after a preliminary inquiry, to make a recommendation to the Commission. The chief judge of a circuit or of a special national court is designated as the presiding officer of the committee. The other members shall be selected in accordance with the rules promulgated under section 391. Judges of the district courts and courts of appeals shall be represented on the circuit committees. Whenever a committee is to consider a complaint filed by or against the chief judge, the judge next in seniority will be the presiding officer. The business of the committee will be conducted according to rules of procedure promulgated under proposed section 391 of title 28, United States Code.

As originally introduced, S. 1423 provided for the transmittal to the chief judge of the appropriate court of any complaint not initially dismissed by the executive director. Within 90 days after transmittal, the chief judge was to commence an inquiry and make a written report to the investigative commission. The investigative commission

is now defined in the amended legislation as the Judicial Conduct and Disability Commission. The Commttee on the Judiciary has been persuaded that this 90-day referral should be modified. Under the modification, the Committee on the Judiciary has established a multi-judge committee for each circuit or special national court. The amended bill further provides that the chief judge of a circuit or of a special national court shall be the presiding officer of the commitee, that other members shall be selected in accordance with rules promulgated under proposed section 391, and that both district court and court of appeals judges of the circuit must be represented in the case of a circuit committee.

The concept of a recommendation from a circuit committee (or one of the special national court committees) is a very important component of the proposed legislation. Testimony received by the Commitee on the Judiciary as a result of hearings on S. 1423 and S. 1110, its predecessor in the 94th Congress, has emphasized the need for immediate referral to the circuit or court of the judge against whom the complaint has been filed. The Committee on the Judiciary believes that the facts concerning the alleged conduct of conditions of the judge are more likely to be available in the circuit or court of the judge against whom a complaint has been lodged rather than from investigative efforts monitored by a national commission.

Section 383. Complaint concerning the condition or conduct of judges; filing and processing

Proposed section 383(a) establishes the requirements for filing complaints and establishes the procedure for initial processing by the Judicial Conduct and Disability Commission. Any person may file a complaint with the commission alleging that the conduct or condition of a judge violates the good behavior standard required by article III, section 1 of the Constitution of the United States. A person, as defined for the purpose of this act, includes: corporations, companies, associations, firms, partnerships, societies, and joint-stock companies, as well as individuals. The complaint must be in writing and either verified or subscribed in the language specified under section 1746 of title 28, United States Code. The executive director of the commission screens all complaints after they are filed in order to dismiss, without prejudice, any that are improperly verified or subscribed. After preliminary inquiry, the executive director shall dismiss, with prejudice, any complaint which is frivolous or outside the jurisdiction of the commission. Examples of the kind of complaints the executive director would dimiss, with prejudice, are complaints against the merits of a decision of a judge which should properly be handled by appeal, complaints about conduct of a judge which is not connected with his judicial office, or complaints which are clearly frivolous.

If the complaint is not dismissed by the executive director, proposed section 383(a) provides that it must be forwarded within 7 days of its filing with the commission to the committee of the circuit or court of the judge against whom a complaint has been filed. At this time, the executive director will also send a copy of the complaint to the judge and notify him that he may submit a statement in his own behalf to the committee within 10 days. Details as to how, where, in what form the written statement is to be presented, as well as what other specific

rights are to be given to the judge, are left to the rules promulgated under proposed section 391 of title 28, United States Code.

A complaint may only be filed with the Judicial Conduct and Disability Commission's office in Washington, D.C. The Committee on the Judiciary has considered the possibility of filing solely with the circuit or court level and also the possibility of a dual filing system both with the circuit or court and the commission. However, the Committee on the Judiciary has been persuaded by testimony received from witnesses that one central location should receive all filed complaints. Use of a centralized point will result in the better processing of complaints, avoid confusion or possible loss of complaints, improve record keeping and facilitate preparation of an annual report.

Under subsection (a), complaints may be filed pertaining to the conduct or condition of a judge of the United States. For the purposes of this proposed legislation, a judge of the United States includes judges of the courts of appeals, district courts, the Court of Claims, the Court of Customs and Patent Appeals, and the Customs Court. All of these are courts created by article III, section 1 of the Constitution of the United States.

The Committee on the Judiciary believes that the requirement that complaints be written and verified or subscribed in the manner prescribed in section 1746 of title 28, United States Code, will tend to reduce the number of frivolous actions filed and if intentional falsehoods are found in a complaint, a conviction based upon a charge of perjury may result.

Section 1746 of title 28 was enacted in the last Congress to provide a mechanism for filing affidavits with the same effect as affidavits given under oath without the necessity of going to a notary public. Section 1746 provides that such affidavits need only be accompanied by a statement that they are signed "under penalty of perjury under the laws of the United States". If a complainant is unwilling to swear that the statements are "true and correct" to the best of his knowledge, no member of the judiciary should be subjected to the investigation procedures before a committee, the commission, or the court.

The decision of the Committee on the Judiciary to authorize the executive director of the Judicial Conduct and Disability Commission to dismiss complaints allows the conduct of business of the commission to occur in a more efficient manner. As a result, the involvement of the members of the commission will not be required for those routine matters.

Further, it is important that the executive director dismiss all complaints against a member of the judiciary that have been based upon the merits of his court decisions; because if not dismissed, both committee and commission proceedings against the judge will ensue. It is of utmost importance that every effort be made to avoid use of these procedures to harass unpopular or outspoken members of the judiciary.

In the case of a dismissal by the executive director under this subsection, the Committee on the Judiciary believes that the executive director should provide the complainant with the reason for the dismissal, and in those cases in which a technical irregularity is correctable, allow the complainant to refile the complaint within a reasonable period of time.

The Committee on the Judiciary has been persuaded that an early dismissal mechanism should be included, since experience of many of the states having similar judicial disciplinary systems indicates that at least one-half of the complaints are of a nature calling for appellate review of a decision of a judge rather than relating to the permanent mental or physical disability or misconduct of a judge.

Proposed section 383(b) authorizes a multijudge committee, upon receipt of a complaint, to conduct a preliminary investigation as to the possible involuntary retirement, removal, or censure of the judge against whom the complaint was filed. This preliminary investigation provision was included as a result of testimony received from several witnesses who testified before the Subcommittee on Improvements in Judicial Machinery in both the 94th and 95th Congresses. According to the witnesses, some judicial circuits and courts attempt to oversee the condition or conduct of their judges as allegations of permanent mental or physical disability or other conduct, such as failure to perform duties of the office or habitual intemperance, are most likely to have come within the factual observations of the judges within the circuit or court in which the aggrieved judge is assigned.

Proposed section 383(c) is divided into three paragraphs. Paragraph (c)(1) specifies that the multijudge committee shall, upon completion of its investigation, recommend to the Judicial Conduct and Disability Commission that the complaint either be dismissed or further investigated by the Judicial Conduct and Disability Commission. In either case, the recommendation of the multi-judge committee must result from a majority of the judges of the committee voting in favor of one of the three available options. Subparagraph (1)(A) states that a recomendation of the committee for a dismissal of a complaint shall mean that the committee finds the complaint to be either frivolous, insufficient in law or fact, or outside the jurisdiction of the commission. Subparagraph (1)(B) states that a recommendation of the committee for further investigation by the commission is based upon the finding of the committee that there is sufficient cause to believe that the condition or conduct of the judge is inconsistent with the good behavior standard required by article III, section 1 of the Constitution of the United States. Subparagraph (1)(C) states that the committee be granted a reasonable time in which to attempt to address the matter raised in a compaint filed against a judge.

Paragraph (c)(2) states that both the judge under inquiry and the Judicial Conduct and Disability Commission shall receive a copy of the recommendation of the committee, accompanied by a written explanation. Although it was suggested to the Committee on the Judiciary that the complainant should receive a copy of the recommendation of the committee, the Committee on the Judiciary felt that in order to be consistent with the confidentiality provision found in proposed section 387 of title 28, United States Code, the complainant should not receive notice of the recommendation. Moreover, the Committee on the Judiciary strongly believes that the complainant should not receive notice where the committee has only made a recommendation, since there has been no final action taken with regard to the complaint.

Paragraph (c)(3) provides that the commission is to have a reasonable period of time to address the matter in a complaint with the

judge through informal means. It is the hope of the Committee on the Judiciary that if a judge's possible misconduct can be alleviated through informal means that it be done in that manner, rather than continuing through the procedures established by this act.

Proposed section 383(d) requires the committee to make its recommendation within 30 days from the receipt of the complaint from the Judicial Conduct and Disability Commission. The Committee on the Judiciary believes that only in unusual or complex cases should the committee request a reasonable extension, which may be granted by the commission in the interest of justice and for cause shown by the committee in its application. The Committee on the Judiciary, while not desiring to specify an amount of time to be granted in such extension, strongly recommends that any extension not exceed 60 days beyond the initial 30-day period.

Proposed section 383(e) specifies that a multijudge committee may utilize existing staff already employed by the circuit or by the court. In addition, the multijudge committee mayw utilize existing staff of other circuits or courts, if necessary, or may request the director of the Administrative Office of the U.S. Courts to procure personal services of experts and consultants to carry out its duties.

While the Committee on the Judiciary has authorized several possible options for the committee in seeking assistance in carrying out its duties, it is believed that the committee would rarely be required to go beyond the existing staff already employed by the respective circuit or court. Further, if it is found necessary to seek the staff assistance of another circuit or court, the staff shall serve without additional remuneration beyond that which they would usually receive if they had not been assigned to assist the committee. In an unusual or complex case, the committee may be required to seek the services of experts and consultants which they must procure through the Administrative Office of the U.S. Courts.

Section 384. Procedure before the Judicial Conduct and Disability Commission

Proposed section 384(a) sets forth the procedure for processing complaints by the Judicial Conduct and Disability Commission. Upon receipt of the recommendation of the committee, the commission shall either dismiss the complaint or initiate its own investigation to determine the nature and existence of any grounds specified under proposed sections 372(c) or 388 of title 28, United States Code, or, if necessary, authorize the committee to attempt to address a matter raised in a complaint within a reasonable period. Upon the conclusion of the time period, the committee shall either recommend to the commission that the case be dismissed or that the commission conduct a further investigation. If a matter can be handled through informal means it should be handled in that manner instead of under other more formal procedures established under the proposed legislation. Complaints should be dismissed, without prejudice, by the commission prior to the initiation of any investigation if the complaint is improperly verified or subscribed, frivolous, or outside the jurisdiction of the commission, as defined in proposed section 383(a). If the commission initiates its own investigation into the condition or conduct of a judge,

the judge against whom the complaint has been filed shall be notified in writing of the pending investigation, of the right to submit a written statement in his own behalf and of other rights under rules promulgated under proposed section 391 of title 28.

Proposed section 384(b) is divided into two paragraphs. Paragraph (1) authorizes the Judicial Conduct and Disability Commission to administer oaths, provide for the inspection of books and records, and issue subpoenas for the attendance of witnesses and production of papers, books, accounts, documents, and testimony from any place in the United States and its territories.

It is the intention of the Committee on the Judiciary to leave broad discretion to the Judicial Conduct and Disability Commission in its investigation into the condition or conduct of a judge. The commission, in the exercise of this discretion, may choose to hold hearings to gather evidence. Witnesses will be ordered to appear before it under rules promulgated under proposed section 391.

Paragraph (2) is the accompanying enforcement provision to the subpoena power authorized in paragraph (1) of subsection (b). If a person is the subject of the subpoena, the Judicial Conduct and Disability Commission may invoke the aid of the district court of the district in which the subpoena resides or may be found, to order such person to produce the evidence or to give testimony relating to the investigation. If such person fails to comply with the court order, the court may hold such person in contempt.

The resides or may-be-found language indicates the district court for the district where the subpoenaed party's dwelling house or usual place of abode is located and it refers to the district court for the district in which the subpoenaed party may be found and personally served with process.

In its analysis of the enforcement provision of the subpoena power as set forth in proposed subsection (b), the Committee on the Judiciary considered requiring the Judicial Conduct and Disability Commission to make application to the Court on Judicial Conduct and Disability for an order to enforce the subpoena with a possible contempt of court penalty. However, after further consideration, it was determined that the commission should not make application to enforce its own subpoena to the court. The Committee on the Judiciary projects that the court will not always be sitting; therefore, if the commission were required to have its subpoena enforced by the court upon application, it might cause undue delay in processing the case.

Proposed section 384(c) is divided into two paragraphs. Under (c)(1), the commission, or a panel acting on its behalf, on the basis of the grounds specified in proposed section 372(c) or 388 of title 28, United States Code shall upon a majority vote, dismiss any complaint which it finds to be frivolous, insufficient in law or fact, or outside its jurisdiction. Under (c)(2), the commission, or a panel acting on its behalf, on the same grounds specified above, shall by majority vote, recommend to the Court on Judicial Conduct and Disability that a hearing be held. This recommendation shall be based upon a finding by the commission that there is sufficient cause to believe that the condition or conduct of the judge may be inconsistent with the good behavior required by article III, section 1 of the Constitution of the United States.

Proposed section 384(d) requires the commission to notify in writing the judge against whom a complaint was filed and the filing complainant with the reasons for the dismissal whenever a complaint is dismissed by the commission. If the complainant believes that the dismissal was arbitrary or capricious, he may petition the Court on Judicial Conduct and Disability to issue a writ of certiorari in order to review the dismissal order. If the writ of certiorari is granted, the Court on Judicial Conduct and Disability may summarily affirm, or, if it determines that the dismissal was arbitrary or capricious, reverse the order or dismissal with directions for further investigation by the Judicial Conduct and Disability Commission.

The abitrary or capricious standard of review will guarantee that the judge will not be subject to further investigation by the commission unless the dismissal of the complaint by the commission was arbitrary and capricious. It is of utmost importance that every effort be made to avoid the use of these new procedures to harass the judge.

Proposed section 384(e) requires the Judicial Conduct and Disability Commission to prepare and file a report with the Court on Judicial Conduct and Disability whenever a recommendation is made that there be a formal hearing. The report shall include the complaint, the recommendation of the committee and of the commission, and a summary of the factual evidence of the investigation.

The report, when filed, is to be entered on the records of the court, a copy of which shall be transmitted to the judge under inquiry and to the complainant.

Proposed section 384(f) requires the Judicial Conduct and Disability Commission to prepare and file a report with the Court on Judicial Conduct and Disability within 90 days from receipt of the recommendation of the multijudge committee. The Committee on the Judiciary while not desiring to specify an amount of time to be granted in such extension, strongly recommends that any extension not exceed 60 days beyond the initial 30-day period.

Proposed section 384(g) specifies that the Judicial Conduct and Disability Commission may utilize its own staff, other employees of a circuit or court, or may procure the personal services of experts or consultants as authorized by section 3109 of title 5, United States Code, with approval of the director of the Administrative Office of the U.S. Courts. While the Committee on the Judiciary has authorized several possible options for the commission in seeking assistance in carrying out its duties, it is believed that the commission will rarely be required to go beyond its own staff. If it is found necessary to seek additional assistance, the employees of a circuit or court shall serve without additional remuneration beyond that which they would normally receive if they had not been assigned to assist the commission. In an unusual or complex case, the commission may be required to seek the services of experts and consultants which they must procure through the Administrative Office of the U.S. Courts.

Proposed section 384(h) requires the Judicial Conduct and Disability Commission to prepare an annual report indicating the number of complaints filed and the action taken on each complaint. The Committee on the Judiciary recommends that the executive director be responsible for its preparation and that the executive director will include other relevant information in the report. The annual report

must adhere to the confidentiality required under proposed section 387 of title 28, United States Code.

It is the intention of the Committee on the Judiciary that when the commission transacts business, all members of the commission shall be provided with a report of the commission's action. This measure will be useful in keeping the commission members informed on the commission's actions, especially in those instances where the commission acts without the presence of all of its members.

Section 385. Court on Judicial Conduct and Disability; duties of the Judicial Conference relating to proceedings with respect to involuntary retirement, removal, and censure.

Proposed section 385(a) establishes the Court on Judicial Conduct and Disability and is divided into two paragraphs. Paragraph (a)(1) states that the Judicial Conference of the United States is to elect one of its members to be presiding officer of the court to hear matters concerning the involuntary retirement, removal, or censure of a judge of the United States. Under section 331 of title 28, United States Code, there are 24 members of the Judicial Conference of the United States: the chief judge of the 11 judicial circuits, plus the chief judges of the Court of Claims and the Court of Customs and Patent Appeals, and 11 district judges chosen by the district judges from each of the 11 judicial circuits. Under this paragraph, the 24 members are directed to elect 1 of their number to be the presiding officer of the Court on Judicial Conduct and Disability. The Chief Justice is prohibited from taking part in any election of the presiding officer nor may he be elected presiding officer. Further, a member of the committee established under proposed section 382 shall not sit as a member of the court in any proceeding relating to his prior participation in a committee recommendation concerning the same matter.

Paragraph (a)(2) specifies that the other six members of the Court on Judicial Conduct and Disability shall be selected by the presiding officer from the membership of the Judicial Conference and service with the presiding officer for a 1-year term pursuant to rules promulgated under proposed section 391 of title 28, United States Code. The presiding officer is also authorized to fill any temporary or permanent vacancy in the court.

Paragraph (a)(2) also provides that the Court on Judicial Conduct and Disability is a court of record established under article III of the Constitution of the United States with all of the appropriate judicial powers, including the power to administer oaths, issue orders and subpoenas for the attendance of witnesses and production of papers, books and other relevant items. Unlike the commission, the court is authorized to enforce its own subpoena order. The attendance of witnesses and production of evidence may be required from any place in the United States or its territories as paragraph (a)(2) grants a nationwide service of process. Attendance may be required at any place designated in the United States for holding court.

Paragraph (a)(2) further indicates the clerk and marshal of the Court on Judicial Conduct and Disability as the clerk and marshal of the district court of the District of Columbia. Each shall be responsible for the maintenance of all records and the service of process and execution of all orders of the court respectively. The Committee on the Judiciary believes that assignment of these duties to the clerk and

marshal of the district court of the District of Columbia will insure the necessary administrative control and efficient operation of the duties of the court imposed by it under the law. In those circumstances in which the Court on Judicial Conduct and Disability is not sitting in the District of Columbia, the clerk and marshal of another district court, with the approval of the Court on Judicial Conduct and Disability may act as the clerk and marshal.

Proposed section 385(b) authorizes the presiding officer of the Court on Judicial Conduct and Disability to convene the court and decide the merits of a written complaint made against a judge upon receipt of a report from the Judicial Conduct and Disability Commission. At the hearing convened by the court, the commission, or its representative, shall appear, offer evidence in support of its report, and shall have the burden of proving its report before the court by clear and convincing evidence. A judge, who is the subject of a hearing, is given at least 10 days' notice of the hearing. He may be represented by counsel, offer evidence in his own behalf, confront and cross-examine any witnesses against him, and has the right to compulsory process to obtain evidence or witnesses.

The Committee on the Judiciary believes that the judge, against whom a complaint has been lodged, shall have his rights protected by the specified due process safeguards.

Proposed section 385(c) is divided into four paragraphs. Paragraph (c)(1) requires the Judicial Conduct and Disability Commission to compile and maintain records of judges who have pleaded guilty, nolo contendere, or have been found guilty in a court of competent jurisdiction of a felony under State or Federal law of any crime under State or Federal law involving moral turpitude.

Under paragraph (c)(2), the Judicial Conduct and Disability Commission is required to file a report directly with the Court on Judicial Conduct and Disability whenever it has determined that a judge has pleaded guilty, nolo contendere, or has been found guilty of the crimes specified in paragraph (c)(1). The Court on Judicial Conduct and Disability may suspend the judge from the exercise of the powers and prerogatives of his office pending final disposition of the complaint filed against him. In those situations in which the conviction is reversed, the order of suspension shall automatically terminate. If such a reversal is subsequently overturned, the order of suspension is automatically reinstated. In the case of either automatic termination or reinstatement, the clerk of the court shall prepare a confirmatory order. When a conviction of a judge becomes final, the court may order his removal or censure.

The Committee on the Judiciary intends a court of competent jurisdiction to be a court which has the authority to act over the cases, the parties and the issues decided by it and includes any proper State or Federal court of general jurisdiction. Whenever a conviction of a judge becomes final, an order or removal or censure may be imposed without a full hearing before the Court on Judicial Conduct and Disability. The option of actually holding a full hearing in this situation remains available under the reference to the rules of procedure of proposed section 391 of title 28, United States Code.

Paragraph (c)(3) specifies that in those cases in which the judge has not pleaded guilty, or nolo contendere, or has not been found guilty of a type of crime specified in paragraph (c)(1) of this sec-

tion, the Court on Judicial Conduct and Disability may only impose an order of suspension upon the holding of a full hearing as specified in subsection (b). Paragraph (c)(3) also indicates that a suspension may be imposed as part of the order of involuntary retirement or removal as specified in subsection (d)(1)(A) and (B). The Committee on the Judiciary believes that it would be inappropriate for a suspension to be imposed when the court orders the censure or dismissal as specified in subsection (d)(1)(C) and (D).

Paragraph (c)(4) states that an order of suspension shall be issued upon a majority vote of the members of the Court on Judicial Conduct and Disability. The presiding officer is not a voting member of the court but shall vote in the case of a tie. Once an order of suspension has been ordered, the court must forward copies of the suspension order to the suspended judge, to the Judicial Conduct and Disability Commission, and to the authority responsible for the assignment of business to judges within the court of the judge affected by the order. Upon receipt of this notification, the authority responsible for the assignment of business pending before the suspended judge must refer his caseload to other judges of the court in an appropriate manner. It is the intent of the Committee on the Judiciary that an order of suspension will allow the suspended judge to continue to receive his salary. However, the Committee on the Judiciary believes that the suspended judge's caseload should be assigned in a manner similar to the division of business among district judges pursuant to section 137 of title 28, United States Code.

Proposed section 385(d) is divided into three paragraphs. Under paragraph (d)(1), the Court on Judicial Conduct and Disability shall order the involuntary retirement, removal, or censure of a judge, or dismissal, in each case brought before it. Complaints shall be dismissed by the court which are frivolous, insucient in law or fact, or outside its jurisdiction.

Paragraph (d)(2) specifies that any order of the Court on Judicial Conduct and Disability made under paragraph (d)(1) of this section must be made by a majority of its members. This paragraph requires that the decision of the court shall be based upon the evidentiary standard of clear and convincing evidence. Since the Committee on the Judiciary does not consider this legislation to be criminal in nature, it was determined that the evidentiary standard of beyond a reasonable doubt would not be appropriate.

Paragraph (d)(3) requires that each order of the Court on Judicial Conduct and Disability shall be written and copies of the order shall be distributed to the Judicial Conduct and Disability Commission, the complainant, and the judge affected by such order. Paragraph (d)(3) further provides that only the commission, or the judge, may file a petition for a writ of certiorari to the Supreme Court under proposed section 1259 of title 28, United States Code, within 10 days after being notified of an order of the court. The Committee on the Judiciary believes that the commission and the judge should be provided the opportunity of review by the Supreme Court. The Committee on the Judiciary felt that an automatic right of appeal could not be provided for, since it was believed that the Supreme Court should be provided some means of controlling its caseload. Instead, the Committee on the Judiciary provided for a discretionary appeal to the Supreme Court, through a petition for writ of certiorari.

Proposed section 385(e) is divided into two paragraphs. Paragraph (e)(1) directs the Court on Judicial Conduct and Disability to automatically stay an order of involuntary retirement, removal, or censure upon the filing of a petition for writ of certiorari to the Supreme Court as authorized under proposed section 1259 of title 28, United States Code. Any order of the court shall become a final order upon either the denial of the petition, affirmance of the order, or expiration of the time for filing the petition. In the case of a decision by the Supreme Court to grant the petition, the Court on Judicial Conduct and Disability may continue an order of suspension pending disposition by the Supreme Court.

Paragraph (e)(2) states that whenever an order of the Court on Judicial Conduct and Disability regarding the involuntary retirement or removal of a judge becomes final, the court shall certify to the President that a vacancy exists. The President is authorized to appoint, by and with the advice and consent of the Senate, a successor to fill the vacancy.

Proposed section 385(f) provides that the Court on Judicial Conduct and Disability may issue an order granting use immunity to compel a person, other than a judge who is the subject of the inquiry, to give testimony or to produce evidence on the basis of his privilege against self-incrimination. In compliance with that order, the evidence given or produced in compliance with that order and any information directly or indirectly derived from the testimony or evidence may not be used against the person so ordered in any criminal case, except in the case of a prosecution for perjury, giving a false statement, or for otherwise failing to comply with the order.

The court shall not issue an order compelling a person to testify or produce evidence until thirty days after notification of the Attorney General of the United States of its intention to do so.

The language of this subsection is similar to that recommended to the Committee on the Judiciary by the Department of Justice and presents a change from the predecessor bill (S. 1110, 94th Congress), which provided for tranactional immunity. The Committee on the Judiciary believes that the transactional immunity is unduly broad and, if granted, would frustrate the purpose of this legislation. For example, if judges A and B conspired to abuse the power of their judicial office, and in order to prove a complaint alleging an abuse by A, the testimony of B was compelled, a transactional immunity, as found in the language of the original bill, would prevent a prosecution of B.

At the request of the Department of Justice, the Committee on the Judiciary has included a provision that requires the Court on Judicial Conduct and Disability to consult with the Attorney General of the United States prior to requiring a person to testify or produce evidence under this subsection. The purpose of such a provision would simply be to avoid a situation in which the conferral of "immunity" by the court might otherwise inadvertently interfere with a case or cases within the authority of the Department of Justice.

Proposed section 385(g) provides that all proceedings before the Court of Judicial Conduct and Disability in open court are to be recorded by an official court reporter. The court reporter shall prepare the record of the proceedings by means of transcribing, certifying and

delivering it to the clerk of court. The Director of the Administrative Office of the United States Courts shall pay the court reporter a fee for the transcript at rates established under section 753(f) of title 28, United States Code. The Committee on the Judiciary intends that the court reporter shall sell copies of the transcript to any person who agrees to pay the appropriate fee at rates specified in section 753(f) of title 28, United States Code.

Proposed section 385(h) authorizes the Court on Judicial Conduct and Disability to utilize existing staff employed by a circuit or court. The section further authorizes the court to procure the personal services of experts or consultants as may be necessary to carry out its duties in any particular case upon a request of the Director of the Administrative Office of the United States Courts. The court may also arrange for the attendance of witnesses and those witnesses, other than an officer or an employee of the United States, shall receive the same fees and other amounts allowed under section 1821 of title 28, United States Code. The amount shall be paid by the United States marshal for all witnesses for the court upon certification by the clerk of court.

Proposed section 385(i) states that the Federal Rules of Evidence shall apply to all proceedings before the Court on Judicial Conduct and Disability.

Proposed section 385(j) states that for the transaction of any court business the court may act upon the concurrence of any four of its members. The Committee on the Judiciary intends that all members of the court shall be informed and provided with a report whenever the court transacts business. This will be useful especially in those instances where the court acts without the presence of all its members.

Section 386. Disqualification of judges

Proposed section 386 disqualifies a judge from serving as a member of any committee, the Judicial Conduct and Disability Commission, or the Court on Judicial Conduct and Disability when it inquires into his own condition or conduct. A judge is also disqualified from serving on any of these three bodies when one of the bodies inquires into a complaint filed by him against another judge. The Committee on the Judiciary believes that adherence to this disqualification provision will tend to avoid a possible conflict of interest, impropriety or appearance of an impropriety.

The Committee on the Judiciary seriously considered including an additional disqualification provision that no judge of the same circuit or court as the judge whose condition or conduct is the subject of any inquiry by the Judicial Conduct and Disability Commission or any hearing by the Court on Judicial Conduct and Disability shall sit on such inquiry or hearing. After full consideration of such provision, it was determined that not all of the judges of the same circuit or court should automatically be prohibited from participating in an inquiry or hearing before the commission or court. In the case of a possible conflict of interest, impropriety, or appearance of an impropriety, the judge sitting on such inquiry or hearing should disqualify himself.

Section 387. Confidentiality of proceedings

Proposed section 387 provides that all matters concerning complaints against judges before a committee of the Judicial Conduct and Disability Commission will remain confidential unless the judge under

inquiry authorizes disclosure. Specifically, this includes all matters filed with, all testimony or evidence given before, and all deliberations of a committee or the commission. However, once the commission files its report, as specified under proposed section 384(e) of title 28, United States Code, the contents of the written complaint, the recommendation of the committee, the report of the commission and all documents and proceedings before the Court on Judicial Conduct and Disability shall be made public. This confidentiality section is enforced by providing that any participant who violates the provisions of the confidentiality action shall be in contempt of court and may be fined not more than $5,000 or imprisoned not more than one year, or both. The enforcement provision applies only to those who participate in the proceeding of a committee or the commission. Application of this provision does not apply to those who disclose confidential information received from a participant.

The Committee on the Judiciary believes that the establishment of a confidentiality provision, which includes a means of enforcing the required confidentiality, will avoid possible premature injury to the reputation of a judge whose condition or conduct does not merit an order of involuntary retirement, removal, or censure. If knowledge of an investigation of a judge is "leaked" to the public, the Committee on the Judiciary feels that the commission should issue a public statement that such an investigation is no indication of the judge's guilt. If the circumstances merit it, the commission may include in its statement the procedures of the commission in processing and investigating a judge. If this judge is subsequently cleared by the commission, a statement stating that the judge has been cleared should be issued. Under no circumstances should the commission discuss the merits or particulars in the case.

In the case of a complainant who publicizes the fact that he has filed a complaint which may include some type of misrepresentation, the Committee on the Judiciary endorses the policy determination that a committee, the commission, or the court clarify any misunderstanding by indicating such facts that a complaint has been filed and other general procedural information without disclosing the specifics of any particular case, thereby protecting the judge from malicious publicity.

Section 388. Removal or censure of judges

Proposed section 388(a) states that a judge of the United States may be removed or censured under the established procedures under title 28 only upon a finding by the Court on Judicial Conduct and Disability that his conduct is or has been inconsistent with the good behavior required by the Constitution of the United States. A judge of the United States includes judges of the courts of appeals, district courts, Court of Claims, Court of Customs and Patent Appeals, and the Customs Court. Each of these courts is composed of judges who are entitled to hold office during good behavior.

Proposed section 388(b) is the definitional section for conduct which is inconsistent with the good behavior required by the Constitution of the United States. This conduct includes but is not limited to willful misconduct in office, willful and persistent failure to perform duties of the office, habitual intemperance, or other conduct prejudicial to the administration of justice that brings the judicial office into disrepute.

While it is the intention of the Committee on the Judiciary to adopt the language from the judicial discipline provisions of an amendment to the Constitution of the State of California, the Committee on the Judiciary believes that the Court on Judicial Conduct and Disability may consider, but is not bound by, other factors in determining whether the behavior of the judge is consistent with the good behavior required by article III, section 1 of the Constitution of the United States. They include the following: (1) The Canons of Judicial Ethics of the American Bar Association and the Judicial Conference of the United States, (2) Resolutions of the Judicial Conference of the United States relating to judicial conduct, and (3) Acts of Congress relating to judicial conduct.

As introduced, S. 1110, the predecessor to S. 1423, specified that a judge could be removed or censured upon a determination that his conduct "is or has been inconsistent with the good behavior required by article III, section 1 of the Constitution." At the five days of hearings held by the Subcommittee on Improvements in Judicial Machinery in February and March, 1976, considerable attention was given to the sufficiency of this language as a statutory standards of conduct. Most of the witnesses at the hearings testified to the effect that S. 1110 should be amended to include a definition of the type of conduct which is "inconsistent with good behavior." The Committee on the Judiciary notes that many of the state judicial disciplinary systems have specified in general terms the type of conduct which justifies disciplinary action. In the State of California, for example, the amendment to the state constitution authorizing the Commission on Judicial Qualifications specifies that "willful misconduct in office, willful and persistent failure to perform his duties, habitual intemperance, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute" are grounds for censure or removal of a judge. In Virginia and Maryland, misconduct in office, persistent failure to perform his duties, and conduct prejudicial to the proper administration of justice are grounds for removal or censure. Most of the states that have established a removal system have patterned their judicial disciplinary system after the California system. Most of them have adopted the grounds specified in California law. A few states have added additional grounds. New Jersey, for example, has added "incompetence" as a ground for removal which would appear to be difficult either to define or to prove.

In the judgment of the Committee on the Judiciary, S. 1423, as amended, includes a statutory definition of the type of conduct which is "inconsistent with good behavior." Such a definition would appear to be of benefit to the judge themselves who will know what type of behavior is prohibited. Definition will also contribute to public understanding of the scope of the authority given to the Judicial Conduct and Disability Commission and, in turn, to the Court on Judicial Conduct and Disability. The Committee on the Judiciary believes that a degree of specificity is preferable to the broad original language of the predecessor bill.

As to the selection of the specific grounds for removal and the choice of language contained in proposed section 338(b) of the amended bill, the Committee on the Judiciary believes that the use of the four grounds specified in California law tends to make them

"terms of art". This offers a body of case law which will aid the Judicial Conduct and Disability Commission and the Court on Judicial Conduct and Disability in applying federal law to specific cases as they arise.

If it is true that the specified grounds are becoming "terms of art," the Committee on the Judiciary does not believe that it should attempt in this report to add a legislative gloss to the terms. The testimony given at the committee hearings on this bill and its predecessor, S. 1110, will aid in interpretation. This report merely lists the proposed grounds for removal or censure and cites some of the cases from state jurisdictions which involved the same or similar language: A monograph entitled "Resource Materials for 5th National Conference of Judiciary Disciplinary Commissions" (1976) published by the American Judicature Society contains a more complete reference to decisions in this area of the law.

1. *Willful Misconduct in Office.*—A leading case is *Geiler* v. *Commission on Judicial Qualifications* (Calif. 1973), 515 P. 2d 1, where it was alleged that the judge arbitrarily and capriciously removed both public defenders and appointed private counsel from criminal cases and used vulgar language and crude behavior towards attorneys and court personnel. In upholding the Commission's order removing the judge from office, the California Supreme Court stated:

> "Willful misconduct in office" connotes something graver than the "lesser included offense" of "conduct prejudicial to the administration of justice that brings the judicial office into disrepute"; the more serious charge should be reserved for unjudicial conduct which a judge, acting in his judicial capacity, commits in bad faith; while the lesser charge should be applied to unjudicial conduct which a judge undertakes in good faith but which would nevertheless appear to be conduct prejudicial to public esteem for the judicial office, *or* to willful misconduct out of office, i.e., unjudicial conduct committed in bad faith by a judge not then acting in a judicial capacity.

In a more recent case, *In the Matter of Edens*, (North Carolina 1976), 226 S.E.2d 5, the North Carolina Supreme Court further clarified the distinctions between "willful conduct in office" and "conduct prejudicial to the administration of justice that brings the judicial office into disrepute." The North Carolina Supreme Court stated:

> In applying criteria for determining whether conduct of a judge is willful misconduct or conduct prejudicial to the administration of justice that brings the judicial office into disrepute, consideration should be given to the traditions, heritage, and generally recognizing practices of the courts and the legal profession, the common and statutory law, codes of judicial ethics, and traditional notions of judicial ethics. Willful misconduct in office is improper and wrong conduct of a judge acting in his official capacity dones intentionally, knowingly and, generally, in bad faith.

Compare, *In re Emmet* (Ala. 1974) 300 So.2d 435; and *In re Stuhl* (North Carolina 1977) 233 S.E.2d 562.

2. *Willful and persistent failure to perform duties of the office.*—A judge who failed to order jury trials upon request, persistently failed to promptly process, try, and dispose of cases, and failed to keep an accurate record of proceedings in his court was removed from office. See *In re Heideman*, 198 NW. 2d 291 (Mich. 1972).

3. *Habitual Intemperance.*—Essentially, this ground for removal or censure is based on empirical standard. For this reason many of the instances which arise are resolved by the rehabilitative efforts of the judge's colleagues; or, failing that, by resignation or retirement. As a result, there are few reported cases.

Raoul Berger in his statement before the Senate Subcommittee on Improvements in Judicial Machinery on February 26, 1976, stated that removal for a mental or physical disability is within the constitutional requirement of "good behavior", as an officer who is disabled physically or mentally cannot diligently conduct his office. Habitual intemperance also interferes with the diligent conduct of office and therefore constitutes a breach of the good behavior provision for which a judge may be removed from office.

Under subsection 372(c)(1) of this proposed legislation, habitual intemperance is deemed to be a mental and physical disability. Therefore, the Court on Judicial Conduct and Disability, instead of ordering a judge's removal or censure, may order his involuntary removal pursuant to proposed subsection 372(c)(1).

The Committee, in keeping with the medical and governmental recognition of habitual intemperance as a disability, does not desire that a judge be removed for habitual intemperance unless the judge has refused to seek medical assistance. Removal for habitual intemperance may also be appropriate when the judge's conduct is so extreme as to constitute conduct prejudicial to the administration of justice; and in the court's discretion, such improper conduct would best be resolved through the judge's removal. Except in such extreme cases, the Committee on the Judiciary believes that a judge should not be removed for habitual intemperance, which would expose him to an uncertain financial fate and leave him no chance of reinstatement, and favors the more humanitarian procedure provided by involuntary retirement.

4. *Other conduct prejudicial to the administration of justice that brings the judicial office into disrepute.*—Again, citation can be made to the *Geiler* case, *supra*, in which the California Supreme Court interpreted this language as applying to "unjudicial conduct which the judge undertakes in good faith but which would nevertheless appear to be conduct prejudicial to public esteem for the judicial office, or to be willful misconduct out of office, i.e., unjudicial conduct committed in bad faith by a judge not then acting in a judicial capacity." In *Geiler*, the Supreme Court held that vulgar horseplay and obscene conversations with female clerks and female attorneys constituted grounds for discipline under this standard. In the case, *In the Matter of Edens*, *supra*, the North Carolina Supreme Court stated:

> Whether the conduct of a judge may be characterized a conduct prejudicial to the administration of justice that brings the judicial office into disrepute depends not so much

> upon the judge's motive but more on the conduct itself, the result thereof, and the impact such conduct might reasonably have upon knowledgeable observers."

Compare *In re Robson*, 500 P. 2d 657 (Alaska 1972); *In re Chargin*, 471 P. 2d 29 (Calif. 1970); *In re Glickfield*, 479 P. 2d 638 (Calif. 1971); and *In the Matter of Carrillo*, 542 CW. 2d 105 (Texas 1976).

At the hearings on S. 1110, it was suggested to the Committee on the Judiciary that "abuse of judicial power" be included as an additional ground for censure or removal. Research by committee staff discloses that this phase is not a "term of art" in the sense that the previously enumerated four grounds are terms of art. No case involving abuse of *judicial* power "in an extravagant manner . . . improperly and to excess." See *Swenson* v. *Cahoon* 152 So. 203 (Fla. 1933) in which the Florida court also distinguished "abuse" from "usurpation of power." The Committee on the Judiciary is aware that legal literature is replete with definitions of "abuse of discretion." It is clear to the Committee on the Judiciary not only that "abuse of discretion" is not the same as "abuse of judicial power" but also that to make the latter a separate and specific ground for removal or censure would invite confusion with the former. To the extent that "abuse of judicial power" involves connotations of impropriety, excess, or extravagance, it is probably an offense included in the term willful misconduct in office." If, in fact, it should be determined that an abuse is not so included, a case involving facts evidencing an abuse of the judicial power would likely be as subject to the residual power of the House of Representatives to impeach as was the recent matter involving abuse of executive power. Therefore, the Committee on the Judiciary has not elected to expressly include the phrase "abuse of judicial power" as a ground for discipline.

It was also suggested to the Committee on the Judiciary at the hearings that "inability to perform duties of the office" be added as a specific ground for removal. The testimony offered at the hearing on S. 1110, 94th Congress (see page 130 of hearing record) was unable to precisely define the suggested phrase, but implied that it was akin to, but different from, physical or mental disability and gross incompetence. The Committee on the Judiciary perceives that the use of terms such as "inability" or "incompetence" imply a relativity which would defy attempts to either define or apply the terms except on a purely subjective basis. Thus, the Committee on the Judiciary rejected the suggestion.

It should also be noted at this point that the hearing record compiled by the Subcommittee on Improvements in Judicial Machinery on this bill and its predecessor, S. 1110, contains strong evidence that this legislation is not intended to authorize disciplinary action against a judge who decides a case erroneously. "Bad behavior" is not synonymous with "bad judge." Frequent reversal of a trial judge by an appellate court is not, in itself, evidence of misconduct. Nor is judicial conservation or judicial activism the equivalent of misconduct.

Proposed section 388(c) states that upon a final removal order, the office of the judge becomes vacant; the entitlement to salary terminates, and for the purposes of section 376(g) of title 28, United States code, the judge is deemed a judge who resigned from office without entitlement to retirement salary.

Section 389. Justices of the Supreme Court; report of impeachment or censure

Proposed section 389(a) establishes the procedure for processing complaints concerning the conduct of Justices of the United States. In many respects, complaints filed against a Justice are handled in the same manner as complaints against judges. The complaints must be in writing, verified or subscribed in the language set forth in section 1746 of title 28, United States Code, and filed with the Judicial Conduct and Disability Commission. The commission, acting through its executive director, shall dismiss by written order, without prejudice, any complaint found to be improperly verified or subscribed. After preliminary inquiry the executive director may dismiss, with prejudice, any complaint which is found to be frivolous or outside the jurisdiction of the commission. Those complaints found to be outside the jurisdiction of the commission include, but are not limited to, complaints relating to the merits of any decision or procedural ruling of a Justice and those not related to judicial office, or those which do not prejudice the administration of justice by bringing the judicial office into disrepute.

As in the case of a complaint filed against a judge, the Committee on the Judiciary believes that the requirements that complaints be written and verified or subscribed in the manner prescribed in section 1746 of title 28, United States Code, will tend to reduce the number of frivolous actions filed. If intentional falsehoods are found in a complaint, a conviction based upon a charge of perjury may result.

Section 1746 of title 28 was enacted in the last Congress to provide a mechanism for filing affidavits with the same effect of affidavits given under oath without the necessity of going to a notary public. Section 1746 provides that such affidavits need only be accompanied by a statement that they are signed "under penalty of perjury under the laws of the United States". If a complainant is unwilling to swear that the statements are "true and correct" to the best of his knowledge, no Justice should be subjected to the investigation and procedures before the committee, commission or court.

The decision of the Committee on the Judiciary to authorize the executive director of the Judicial Conduct and Disability Commission to dismiss complaints, allows the conduct of business of the commission to occur without the involvement of the members of the commission for routine matters.

In the case of a dismissal by the executive director under this subsection, the Committee on the Judiciary believes that the executive director should provide the complainant with the reason for the dismissal and, in those cases in which a technical irregularity is correctable, allow the complainant to refile the complaint within a reasonable period of time.

Further, it is important that the executive director dismiss all complaints against a Justice that have been based upon the merits of his court decision because if not dismissed both panel and Commission proceedings against the Justice will ensue. It is of utmost importance that every effort be made to avoid use of these new procedures to harass unpopular or outspoken Justices.

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The Committee on the Judiciary has been persuaded that an early dismissal mechanism should be included, since experience of many of the states having similar judicial disciplinary systems indicates that at least half of the complaints are of a nature calling for appellate review of a decision of a judge, rather than relating to misconduct.

Proposed section 389(b) is divided into five paragraphs. Paragraph (b)(1) states that a complaint filed against a Justice which is not initially dismissed by the Judicial Conduct and Disability Commission or a panel acting on behalf of the Commission under section 381 (b)(2) of this title, is not referred to a multijudge committee as in the case of a judge, but instead remains with the commission which conducts its investigation. The investigation shall determine whether there is sufficient cause to believe that the conduct of the Justice is inconsistent with the good behavior standard required by article III. section 1 of the Constitution of the United States. The Justice under inquiry receives a copy of the complaint at this stage and is notified of the investigation, of his right to submit a written statement to the commission and of other rights promulgated under proposed section 391 of title 28, United States Code, the rules of procedure section of this legislation.

Paragraph (b)(2) indicates that the Judicial Conduct and Disability Commission, or a panel acting on its behalf, shall, after completion of its investigation, by majority vote either dismiss the complaint or recommend to the Court on Judicial Conduct and Disability that it hold a formal hearing. Since the commission is composed of 12 members, a majority, or seven, is required for a vote either in favor of the order of dismissal or the recommendation for a hearing. However, the chairman of the commission may appoint a panel of seven to act on behalf of the full commission. In this case, a majority vote would require the concurrence of four of the members of the panel. The commission, or a panel acting on behalf of the commission, must dismiss any complaint which it finds frivolous, insufficient in fact or law, or outside the jurisdiction of the commission. If the commission decides to recommend to the court that it hold a hearing, the commission must base its decision upon a finding that there is sufficient cause to believe that the conduct of the Justice may be inconsistent with the good behavior required by the Constitution.

Paragraph (b)(3) states that whenever the Judicial Conduct and Disability Commission dismisses a complaint under this section, it must notify the complainant and the Justice against whom the complaint was filed. In its notification to the Justice and the complainant, the commission must state the reason for the dismissal. Paragraph (b)(3) further states that the complainant has ten days from notification in which to petition the Court on Judicial Conduct and Disability to issue a writ of certiorari to review the dismissal order. If the court grants the writ of certiorari, the Court on Judicial Conduct and Disability may summarily affirm the decision of the Judicial Conduct and Disability Commission, or, if it determines that the dismissal was arbitrary or capricious, reverse the commission with directions for further investigation by that body.

The arbitrary or capricious standard of review will guarantee that the Justice will not be subject to futher investigation by the commission unless the dismissal of the complaint by the commission was

arbitrary or capricious. It is of utmost importance that every effort be made to avoid the use of these new procedures to harass the Justice.

Paragraph (b)(4) indicates that whenever the Judicial Conduct and Disability Commission recommends that a hearing be held in the Court on Judicial Conduct and Disability, it must prepare and file a report which includes the complaint, its recommendation, and a summary of the factual evidence which its investigation has disclosed. The report shall be entered on the records of the court and copies shall be provided to the Justice and the complainant.

Paragraph (b)(5) provides that the Judicial Conduct and Disability Commission shall prepare and forward its report to the Court on Judicial Conduct and Disability within 120 days from the initial filing of the complaint. However, the commission may make application to the Court on Judicial Conduct and Disability for an extension which the court may grant in the interest of justice and for cause shown.

Proposed section 389(c) is divided into six paragraphs, Paragraph (c)(1) provides that the presiding officer of the Court on Judicial Conduct and Disability shall convene the court at the earliest practical date upon receipt of the report of the Judicial Conduct and Disability Commission.

It further provides that the hearing before the court shall be conducted in the same manner as a hearing for a judge under proposed section 385 of this title as specified in the subparagraph with references to subsections (a), (b), (f), (g), (h), (i) an (j) of that section.

Paragraph (c)(2) provides that the Court on Judicial Conduct and Disability shall in each matter brought before it either: (A) recommend to the House of Representatives the impeachment of any Justice whose conduct they find to be an impeachable offense; or (B) recommend to the House of Representatives the censure of any Justice whose conduct they found to be inconsistent with the good behavior of the Constitution; or (C) order the dismissal of the case. Complaints shall be dismissed by the court which are frivolous, insufficient in fact or law, or outside its jurisdiction.

A review of the testimony from hearings before the Subcommittee on Improvements in Judicial Machinery relating to the issue of whether the Justices of the Supreme Court should be included as part of such a judicial disciplinary system has resulted in their inclusion. Due to the fact that the Supreme Court is the highest court in the nation and as such is closely observed by public scrutiny, the Committee on the Judiciary has concluded that misconduct of the Justices of the Supreme Court could be treated via the impeachment mechanism but preceded by a recommendation of the Court on Judicial Conduct and Disability that the Justice be impeached. Under the amended proposal, a complaint may be filed against a Justice of the Supreme Court which alleges conduct inconsistent with the requirement of the good behavior clause of the Constitution of the United States. The complaint, filed with the Judicial Conduct and Disability Commission, is investigated by that body and is either dismissed or reported in the form of a recommendation that a formal hearing be held before the Court on Judicial Conduct and Disability. Upon a hearing before this body, an order of dismissal or a recommendation

that the Justice be impeached is filed with the House of Representatives for appropriate action by that body.

Paragraph (c)(3) states that each determination of the Court on Judicial Conduct and Disability, whether in the form of a recommendation to the House of Representatives or an order of dismissal, shall be made by a majority of its members and be supported by the evidentiary standard of clear and convincing evidence. Since the Committee on the Judiciary does not envision this legislation to be criminal in nature, it was determined that the evidentiary standard of beyond a reasonable doubt would not be appropriate.

Paragraph (c)(4) defines conduct which is inconsistent with the good behavior required by the Constitution of the United States. This conduct includes, but is not limited to, willful misconduct in office, willful and persistent failure to perform duties of the office, habitual intemperance, or other conduct prejudicial to the administration of justice that brings the judicial office into disrepute. While it is the intention of the Committee on the Judiciary to adopt language from the judicial disciplinary provisions of an amendment to the Constitution of the State of California, the Committee on the Judiciary believes that the Court of Judicial Conduct and Disability may also consider, but is not bound by, other factors in determining whether the behavior clause contained in the Constitution of the United States. These factors include the following: (1) The Canons of Judicial Ethics of the American Bar Association and the Judicial Conference of the United States, (2) Resolutions of the Judicial Conference of the United States relating to judicial conduct, and (3) Acts of Congress relating to judicial conduct. Since the language specified in this proposed paragraph is identical to that found in proposed section 388(b), further information as to use of the language specified in the California Constitution can be found in the sectional analysis pertaining to proposed section 388(b).

Proposed paragraph (c)(5) indicates that whenever the Court on Judicial Conduct and Disability recommends to the House of Representatives the impeachment or censure of a Justice, the court shall prepare a written report. The report includes the complaint made against the Justice, the recommendations of the court and of the commission, a copy of the transcript of the hearing, and specific findings made by the Court. Copies of this report shall be forwarded to the Justice of the Supreme Court against whom a complaint has been filed and to the complainant. The paragraph concludes that there shall be no judicial review of a recommendation for the impeachment or censure.

Proposed paragraph (c)(6) states that written notification shall be made both to the Justice under inquiry and the complainant with each dismissal order of the Court on Judicial Conduct and Disability. As there was no judicial review of a recommendation, the Committee on the Judiciary has determined that there shall be no review of a dismissal order.

Proposed Section 389(d) is similar to the confidentiality provision found in proposed section 387, except that subsection (d) relates to the confidentiality of Justices. All matters filed with, all testimony or evidence given before, and all deliberations of the Judicial Conduct and Disability are to remain confidential unless the Justice under

inquiry authorities disclosure. However, once the commission files a report under proposed section 389(b)(4) of title 28, United States Code, the contents of the written complaint, the report of the Commission and all documents and proceedings before the court shall be made public. As found in proposed section 387, proposed section 389(d) also contains an enforcement provision stating that any participant who violates the provisions of this confidentiality section shall be in contempt of court and may be fined not more than $5,000 or imprisoned not more than one year, or both. The enforcement provision applies only to those who participate in the proceedings of the Judicial Conduct and Disability Commission. This provision does not apply to those who disclose confidential information received from a participant.

The Judicial Conference of the United States, while approving in principle the predecessor bill (S. 1110, 94th Congress) which is similar to S. 1423, suggested that the proposed legislation not apply to the Justices of the Supreme Court. The Judicial Conference justified its position by indicating that the impeachment process is sufficient to review the conduct of a Justice of the Supreme Court. The language of article III, section 1 of the Constitution of the United States provides that "good behavior" is a condition of the tenure of judges, "both of the Supreme and inferior Courts". On several occasions during the course of hearings on this legislation, there have been warnings that enforcement of the good behavior requirement against federal judges and the Justices of the Supreme Court would not be satisfactory. In this connection, the Committee on the Judiciary has been informed that for some time a number of district judges have declined as a matter of principle to file reports of extra-judicial income as required by resolution of the Judicial Conference, since the same report is not required of Justices of the Supreme Court.

With reference to the inappropriateness of including Justices of the Supreme Court, a witness reminded the Committee on the Judiciary that the President of the United States can be tried by a jury composed of persons from every walk of life. It seems to the Committee on the Judiciary that issues of misconduct against a Justice, if alleged, will at least provide an avenue whereby complaints can be filed, investigated and a formal hearing held before the Court on Judicial Conduct and Disability which could result in a recommendation to the House of Representatives that the Justice be impeached or censured. Under this proposal, a number of preliminary steps will be undertaken prior to any action by the House of Representatives. Further, any action by the House of Representatives could be based upon investigatory work of the Judicial Conduct and Disability Commission and the report of the Court on Judicial Conduct and Disability.

It should also be noted that the American Bar Association, which also supports this bill in principle, also has recommended that Justice of the Supreme Court not be included within the scope for the bill.

Section 390. Claims of involuntary retired judges relating to judicial duties

Proposed section 390(a) entitles a judge who has been involuntarily retired under proposed section 372(c) of title 28, United States Code, to go before the Court of Judicial Conduct and Disability and assert

his claim for assignment under section 294, United States Code. Such a claim must allege that the mental or physical disability for which the judge was retired has improved and that he is again able to undertake judicial duties.

Proposed section 390(b) indicates that the Court on Judicial Conand Disability is authorized to prescribe by rule the appropriate procedures for the proper consideration and resolution of the claims brought before it under proposed section 390(a). Any resolution by the court shall occur by majority vote and upon the issuance of an order. Such order shall be provided to the authority responsible for the assignment of judicial duties to retired judges within the circuit or court of the judge affected by the order.

A forceful argument can be made that an involuntary retirement system complies with the requirement of the constitutional provision for tenure during good behavior, if it provides for the continuation of the judge's salary and for an enforceable right to perform such judicial functions as the retired judge is willing and able to perform. S. 1423, as amended, provides for both the continuation of the salary and an enforceable right.

In order to avoid an overly broad incursion into the principle of judicial independence during "good behavior," a provision which gives an involuntarily retired judge an enforceable right to be assigned to such judicial duties as he or she is willing and able to perform is desirable. The legislation would then, in effect, provide that a disabled judge could be involuntarily retired and given the status of senior judge.

The inclusion of this enforceable right provision reconciles in a constitutionally permissible mannner the divergent interests of the public in an efficient and at the same time independent judiciary. It also protects the interests of the judiciary. It also protects the interests of the judiciary in protecting against unwarranted interference with its activities, as well as against the vicissitudes of illness and old age.

Section 391. Rules of procedure; Court on Judicial Conduct and Disability, Judicial Conduct and Disability Commission and Committees; Attorneys' Fees

Proposed section 391(a) directs the Judicial Conference of the United States to promulgate rules of procedure for the Court on Judicial Conduct and Disability and the Judicial Conduct and Disability Commission.

Proposed section 391(b) directs the Judicial Conference of the United States to promulgate rules for the multi-judge committees established under proposed section 382 of title 28, United States Code, or in the alternative, directs the Judicial Conference to authorize the judicial council of each circuit, the Court of Claims, the Court of Customs and Patent Appeals, and the Customs Court to promulgate rules of procedure for their respective committees. Any rules, whether promulgated by the Judicial Conference or as provided in t' e alternative, must be consistent with the rules of procedure promulgated for the Court on Judicial Conduct and Disability and the Judicial Conduct and Disability Commission.

Proposed section 391(c) authorizes the Judicial Conference of the United States to modify any of the rules promulgated under this sec-

tion and also requires that all rules under this section are a matter of public record.

Proposed section 391(d) entitles both a judge and a Justice to be reimbursed for a reasonable attorneys' fees if a complaint against them is dismissed. Without providing attorneys' fees when complaints finally are dismissed, the independence of judges and Justices who meet the good behavior requirement may be seriously compromised. The cost of defending a complaint through a commission and court proceeding may be extremely high. Judges and Justices should not be forced to absorb these costs if they ultimately are vindicated.

The Committee on the Judiciary recognizes that the complaint mechanism established by this bill may be misused by those wishing to harass unpopular judges or Justices. A number of safeguards have been written ino the bill to avoid such misuse—most notably the obligation of the executive director initially to dismiss improperly verified or subscribed complaints as well as those which are frivolous or outside the jurisdiction of the Judicial Conduct and Disability Commission. However, no matter how diligent the executive director may be, some groundless complaints may be referred to a committee and commission for consideration.

When a complaint is not dismissed by the executive director of the commission under sections 383(a) or 389(a), a long and tortuous proceeding inevitably follows. With respect to a complaint against a judge, complaints are transmitted to a committee which has 30 days to conduct a preliminary investigation and make a recommendation and then the commission has 90 days to conduct a further investigation. Even if the committee recommends dismissal of a complaint, the commission must make its own determination of whether or not to dismiss a complaint. Even if the commission dismisses the complaint, the complainant may petition to the Court on Judicial Conduct and Disability to review the dismissal. If the commission does not dismiss a complaint, further proceedings will follow. A case may be similarly protracted when the executive director fails to dismiss a complaint against a Justice.

The legal expense for a judge or Justice is likely to be greatest in the Judicial Conduct and Disability Commission and subsequent court proceedings. During a committee proceeding, a judge may submit a written statement in his behalf. In contrast, at a commission proceeding a judge or Justice has far greater opportunity to participate. If a court proceeding is held, a judge or Justice has the full rights of a party. Most of the expense for a judge or Justice, therefore, will be incurred in commission and subsequent court proceedings. Accordingly, the attorneys' fee provision applies only to expenses incurred during these stages of a proceeding.

A judge or Justice may only receive attorneys' fees under this section if a complaint finally is dismissed. Therefore, if the commission dismisses a complaint but the court remands the matter for further investigation and the judge ultimately is censured, no attorneys' fees are to be provided. The entitlement to attorneys' fees arises only once the matter ultimately is resolved.

The amount of attorneys' fees which are awarded must be reasonable. Compensation for the expenses of attorneys' fees, fees and costs

of experts, and for other costs of participation should be awarded at the prevailing market rates for the kind and quality of the services rendered. In general, the committee intends that judges and Justices should be compensated for the fees paid to their attorneys and experts at rates which are commensurate with those at which such professionals would normally be compensated for rendition of similar services. This point reflects the well-settled judicial rule that fee awards are to be made without reference to the fee arrangements that exist between an attorney and his client. As the United States Court of Appeals stated in *Miller* v. *Amusement Enterprises, Inc.*, 426 F. 2d 534, 538–39 (5th Cir. 1970):

> What is required is not an obligation to pay attorneys' fees. Rather what—and all—that is required is the existence of a relationship of attorney and client, a status which exists wholly independently of compensation.

Reasonableness of fees is to be determined according to general professional standards. In the case of attorneys, an appropriate guide for setting fees is the American Bar Association's *Code of Professional Responsibility*, Disciplinary Rule 2–106.

The Act does not, however, required that only the expenses of licensed attorneys or certified experts are compensable. The term "other costs reasonably incurred" means such other expenses as are found to be reasonably necessary for defense of the judge or Justice in the proceeding, including but not limited to administrative and travel expenses. Where a judge or Justice does not employ the services of a licensed attorney but chooses instead to present his own defense, appropriate compensation may be provided for such representation as a "reasonable" cost.

Under this section the Judicial Conference is given the responsibility to determine the amount of reimbursement to which the judge or Justice is entitled and to pay this amount from its own funds. The executive director of the commission is appointed by the Judicial Conference and has the responsibility initially to dismiss groundless complaints. When the executive director fails to dismiss a complaint which ultimately is dismissed, it is appropriate that the Judicial Conference pay the attorneys' fees of the judge or Justice.

Section 392. Intervention, amicus curiae, and mandamus

Proposed section 392(a) states that no person may either intervene or appear as amicus curiae in any proceeding before a three judge panel under proposed section 382 of title 28, United States Code, the Judicial Conduct and Disability Commission, or the Court of Judicial Conduct and Disability.

Proposed section 392(b) provides that the Court on Judicial Conduct and Disability shall have the exclusive original jurisdiction to hear any mandamus action directed against a multi-judge committee established under proposed section 382 of this title or the Judicial Conduct and Disability Commission.

A person, other than a party, should neither be allowed to be interposed in nor be allowed, as a "friend of the court", to introduce any materials in order to protect his interests in any proceeding under the Judicial Tenure Act. By requiring an action of mandamus regarding

a ministerial duty, such as a failure to act by any committee or the Judicial Conduct and Disability Commission, to be brought before the Court on Judicial Conduct and Disability, the Committee on the Judiciary has concluded that it would only be appropriate for the Court of Judicial Conduct and Disability to make such determination.

SECTION 3

Section 3 of the bill amends title 28, United States Code, by adding a new subsection (c) to existing section 372.

Proposed subsection 372 (c)(1) authorizes the involuntary retirement of any judge of the United States who has been appointed to hold a judicial office during good behavior required by article III, section 1 of the Constitution of the United States when he is eligible to retire and does not so retire. An involuntary retirement may occur when a majority of the members of the Court on Judicial Conduct and Disability determine that the judge is not able to discharge efficiently the duties of his office because of a permanent mental or physical disability and order his involuntary retirement. The proposed subsection further states that habitual intemperance shall be deemed a disability. The Rehabilitation Act of 1973 and subsequent amendments recognize alcoholic persons and drug addicts as handicapped persons.

Habitual intemperance is defined as a chronic disease or dysfunction characterized by repeated indulgence in drugs including alcohol, such that it amounts to a dependence and causes harm to the ingestor's health, or social, or economic functioning.

A judge who is involuntarily retired is entitled to receive the salary specified in section 372(a). However, he shall not possess any powers of the judicial office unless the Court on Judicial Conduct and Disability makes a determination under proposed section 390 of title 28, United States Code, that he should be allowed to do so.

In a recent California Supreme Court decision, *McComb* v. *Commission on Judicial Performance* (Calif. 1977) 564 P.2d 1, the court upheld the Commission on Judicial Performance recommendation to involuntarily retire a 82-year-old justice based on the findings and conclusions that he suffered from a disability (chronic brain syndrome, senile domentia) that seriously interfered with the performance of his judicial duties and that the disability was, or was likely to become, permanent. Compare *In re Involuntary Retirement of Nelson*, (Fla. 1974) 288 So. 2d 218; and *In re Falk*, (Fla. 1975) 323 So. 2d 571.

Proposed subsection 372(c)(2) authorizes the President of the United States to appoint a successor, by and with the advice and consent of the Senate, to any judge who has been involuntarily retired under section 372(c). Once a successor has been appointed, the vacancy subsequently caused by the death or resignation of an involuntarily retired judge may not be filled.

Proposed subsection 372(c)(2) is meant to supplement and provide an alternative to § 372(b) which authorizes the President to appoint a substitute judge upon the failure of a permanently disabled judge to retire.

Existing law deals with two aspects of judicial disability. A disabled judge may retire voluntarily under section 372(a) of title 28, United States Code. In that event, he becomes a senior judge and can

perform judicial duties only by designation and assignment pursuant to sections 294 (b) and (e) of title 28. If a disabled judge does not retire voluntarily, the proper dispatch of business may suffer and require the appointment of an additional judge. In that event, section 372(b) of title 28, United States Code, authorizes the judicial council of his circuit in the case of a circuit or district judge, or the Chief Justice of the United States in the case of the chief judge of the Court of Claims, Court of Customs and Patent Appeals, or Customs Court, to certify the disability to the President who thereupon may appoint an additional judge. A judge whose disability causes the appointment of an additional judge is treated as junior in commission to other judges of the circuit, district, or court.

The Committee on the Judiciary believes that neither of these subsections need be altered. In creating subsection (c), the committee here authorizes the Court on Judicial Conduct and Disability to involuntarily retire a disabled judge who is found to have a permanent or mental disability which renders the judge unable to discharge efficiently one or more of the critical duties of the office.

SECTION 4

Section 4 of the bill adds a new section to chapter 81 of title 28, Untied States Code.

Section 1259. Court on Judicial Conduct and Disability; appeal of order

Proposed section 1259(a) provides that an aggrieved judge may petition the Supreme Court for a writ of certiorari to review an order of the Court of Judicial Conduct and Disability which involuntarily retired, removed, or censured the judge for a condition or conduct inconsistent with the good behavior required by article III, section 1 of the Constitution of the United States.

Proposed section 1259(b) is the counterpart to subsection (a) and provides that the Judicial Conduct and Disability Commission may petition the Supreme Court to review by writ of certiorari an order of the Court on Judicial Conduct and Disability dismissing a complaint against a judge.

Proposed section 1259(c) indicates that a petition filed under either subsection (a) or (b) must be filed within ten days after receipt of the written notification of the order provided to the parties by the Court on Judicial Conduct and Disability.

SECTION 5

Section 5 of the bill amends section 294 of title 28, United States Code, by modifying subsections (c) and (e).

Subsection 294(c) is proposed to be amended and permits a judge who has voluntarily retired from a circuit, district, or any other court of the United States, or a judge who has been involuntarily retired and subsequently determined again able to undertake judicial duties under section 390 of title 28, United States Code, to be designated and assigned by the chief judge or judicial council of the circuit or the chief judge of his court to perform such judicial duties within the circuit or court as he is willing and able to undertake.

Subsection 294(e) is proposed to be amended to specify that judges who have been reinstated pursuant to proposed section 390 of this title be added to those voluntarily retired justices or judges who may not undertake judicial duties except when designated and assigned.

SECTION 6

Section 6 of the bill amends three sections of title 28, United States Code.

Section 569(b) is proposed to be amended by adding the Court on Judicial Conduct and Disability and the Judicial Conduct and Disability Commission to those specified. Section 569(b) requires the United States marshals to execute all lawful writs, processes, and orders of the Court of Judicial Conduct and Disability and the Judicial Conduct and Disability Commission.

Section 604(f) is proposed as a new subsection and directs the director of the Administrative Office of the United States Courts to provide facilities and pay necessary expenses incurred by the Judicial Conduct and Disability Commission, including mileage allowance and witness fees at the same rate authorized under section 1821 of title 28, United States Code, and fix the compensation of employees and experts and consultants of the commission not otherwise fixed by law.

Section 610 is proposed to be amended by adding the Court on Judicial Conduct and Disability to the other included courts.

SECTION 7

Section 7 is a separability provision which states that if any provision is found to be invalid the remainder shall remain and not be affected.

SECTION 8

Section 8 authorizes the appropriation of funds as may be necessary to carry out the Act.

SECTION 9

Section 9 states that effective date of the Act shall be January 1, 1979.

Changes in Existing Law

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows: (Existing law in which no changes are proposed is shown in roman, existing law proposed to be repealed is enclosed in black brackets, and new matter is printed in italic.)

TITLE 28

Judiciary and Judicial Procedure

CHAPTER 13—ASSIGNMENT OF JUDGES TO OTHER COURTS

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§ 294. Assignment of retired Justices or judges to active duty

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(c) [Any retired circuit or district judge may be designated and assigned by the chief judge or judicial council of his circuit to perform such judicial duties within the circuit as he is willing and able to undertake. Any other retired judge of the United States may be designated and assigned by the chief judge of his court to perform such judicial duties in such court as he is willing and able to undertake.] *Any voluntarily retired circuit, district or any other judge of the United States, or any involuntarily retired judge who is determined again able under section 390 of this title to undertake judicial duties, may be designated and assigned by the chief judge or judicial council of his circuit, or the chief judge of his court, to perform such judicial duties within the circuit or in such court as he is willing and able to undertake.*

* * * * * * *

(e) [No retired Justice or judge shall perform judicial duties except when designated and assigned.] *Neither a Justice or judge who has voluntarily retired nor a judge who was involuntarily retired but has been determined again able under section 390 of this title to undertake judicial duties shall perform judicial duties except when designated and assigned.*

CHAPTER 17—RESIGNATION AND RETIREMENT OF JUDGES

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§ 372. Retirement for disability; substitute judge on failure to retire

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(c) (1) Whenever any judge of the United States appointed to hold office during good behavior is eligible to retire and does not so retire, and a majority of the Court on Judicial Conduct and Disability finds, pursuant to a complaint filed under section 383 of this title, that the judge is unable to discharge efficiently the duties of his office by reason of a permanent mental or physical disability, the court shall order the involuntary retirement of the judge. Habitual intemperance shall constitute a disability for the purposes of this subsection. Such judge shall be entitled to salary as specified in subsection (a) of this section. An involuntarily retired judge shall be deprived of all powers of the office except that an involuntarily retired judge who has been determined again able to undertake judicial duties under section 390 of this title may be designated and assigned under section 294 of this title.

(2) The President shall, by and with the advice and consent of the Senate, appoint a successor to any judge retired involuntarily under the provisions of this subsection. After the successor has been appointed, the vacancy subsequently caused by the death or resignation of the judge involuntarily retired shall not be filled.

Chapter Sec.
18. Procedures for involuntary retirement, removal or censure ---------- *381*

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CHAPTER 18—PROCEDURES FOR INVOLUNTARY RETIREMENT, REMOVAL, OR CENSURE

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Sec.
381. Judicial Conduct and Disability Commission; establishment.
382. Committees; selection of members; receipt of complaints.
383. Complaint concerning the condition or conduct of judges; filing and processing.
384. Procedure before the Judicial Conduct and Disability Commission.
385. Court on Judicial Conduct and Disability; duties of the Judicial Conference relating to proceedings with respect to involuntary retirement, removal, and censure.
386. Disqualification of judges.
387. Confidentiality of proceedings.
388. Removal or censure of judges.
389. Justices of the Supreme Court; report of impeachment or censure.
390. Claims of involuntarily retired judges relating to judicial duties.
391. Rules of procedure; Court on Judicial Conduct and Disability, Judicial Conduct and Disability Commission, and committees; attorneys' fees.
392. Intervention; amicus curiae; mandamus.

§ 381. Judicial Conduct and Disability Commission; establishment

(a) There is established in the judicial branch of the Government a body which shall be known as the Judicial Conduct and Disability Commission. The mandate of the commission shall be to further the honest, impartial, and efficient administration of justice in the courts of the United States in accordance with the duties imposed upon it by law. The Judicial Conference of the United States is authorized and directed to appoint an executive director, whom it may remove for cause shown. The Judicial Conference shall fix the compensation of the executive director at a rate not to exceed the lowest annual rate of pay payable for grade 16 of the General Schedule (GS–16) prescribed under section 5332 of title 5. The executive director shall be eligible for increases in pay corresponding with those provided for by section 5335 of title 5. The executive director, with the approval of the commission, may appoint necessary employees of the commission in such number as may be approved by the Director of the Administrative Office of the United States Courts.

(b)(1) The commission shall be composed of one member from each judicial circuit, and one member selected collectively by the judges of the Court of Claims, the Court of Customs and Patent Appeals, and the Customs Court. Each member shall be a judge of the United States in regular active service or senior status. Each member from a circuit shall be elected by the circuit and district judges of the circuit who are in regular active service or senior status, at a judicial conference of the circuit held pursuant to section 333 of this title. The one member representing the Court of Claims, the Court of Customs and Patent Appeals, and the Customs Court shall be elected by the judges of those courts who are in regular active service or senior status. A judge of any court created by an Act of Congress in a territory which is invested with jurisdiction of a district court of the United States may not take part in any election or be elected as a member of the commission. A judge who is a members of the Judicial Conference may not serve simultaneously as a member of the commission. The members of the commission shall elect one of its members as chairman of the commission.

(2) The chairman may appoint, pursuant to rules promulgated under section 391 of this title, a panel of seven members of the commission to carry out the duties of the commission under this chapter and to consider any complaint not dismissed under section 383(a) of this title. The panel is authorized to act on behalf of the commission upon the concurrence of four of the members of the panel.

(c) (1) The term of each member of the commission shall be three years except that when the commission is initially selected four of the members shall serve two-year terms and four of the members shall serve one-year terms. The chairman shall decide who shall serve each of the initial terms. The term of any member shall automatically be extended until his successor has qualified. A member selected to fill a vacancy shall commence a full three-year term. A judge may serve on the commission any number of terms but may not serve consecutive terms.

(2) The term of a member of the commission shall automatically expire when that member resigns as a judicial officer, is involuntarily retired under section 372(c) of this title, or is removed or censured under section 388 of this title.

(d) For the purposes of section 456 of this title, the performance of duties as a member of the commission shall constitute the transaction of official business.

§ 382. Committees; selection of members; receipt of complaints

Each circuit, the Court of Claims, the Court of Customs and Patent Appeals, and the Customs Court shall have a committee of judges who are in regular active service or senior status to receive, process, and review any complaints against judges of their respective circuits or courts transmitted from the Judicial Conduct and Disability Commission under section 383(a) of this title. The chief judge of each of the circuits, the Court of Claims, the Court of Customs and Patent Appeals, and the Customs Court, shall sit as the presiding officer of the respective committee. The other members shall be selected in accordance with the rules promulgated under section 391 of this title. Judges of the district court and court of appeals must be represented in the case of a circuit committee. During consideration of a complaint filed by or against a chief judge, the next most senior member of the circuit, or of the Court of Claims, the Court of Customs and Patent Appeals, or the Customs Court, shall sit as presiding officer of the committee and select the other members of the committee. Upon receipt of a complaint transmitted from the commission, the committee shall convene and conduct its proceedings in accordance with the rules promulgated under section 391 of this title.

§ 383. Complaint concerning condition or conduct of judges; filing and processing.

(a) Any person may file a complaint with the Judicial Conduct and Disability Commission setting forth the condition or conduct of a judge of the United States, alleging that such condition or conduct violates the good behavior standard required by article III, section 1 of the Constitution. All complaints shall be in writing and certified or subscribed in the manner set forth in section 1746 of this title. The commission, acting through its executive director, shall dismiss by

written order, without prejudice, any complaint found to be improperly verified or subscribed, or, after preliminary inquiry, with prejudice, any complaint which is frivolous or outside the jurisdiction of the commission. Complaints which are outside the jurisdiction of the commission include, but are not limited to, complaints relating to the merits of any decision or procedural ruling of a judge, and complaints relating to the condition or conduct of a judge which is not connected with his judicial office into disrepute. Any complaint not initially dismissed by the commission, acting through its executive director, shall be transmitted within seven days of the filing of the complaint to the presiding officer of the committee of the respective circuit or court. A judge whose condition or conduct is the subject of a complaint transmitted to a committee shall receive a copy of such complaint and shall be notified in writing by the commission of his right to submit to the committee within ten days a written statement in his own behalf and of oher rights under rules promulgated under section 891 of this title.

(b) Upon receipt of the complaint from the commission, the committee shall conduct a preliminary investigation to determine the nature and existence of any of the grounds specified in section 372(c) of this title for the involuntary retirement of a judge, or in section 388 of this title for the removal or censure of a judge.

(c)(1) Each committee, after completion of its investigation and on the basis of the grounds specified in section 372(c) or 388 of this title, shall, by majority vote, recommend to the commission—

(A) dismissal of any complaint which it finds to be frivolous, insufficient in law or fact, or outside the jurisdiction of the commission; or

(B) further investigation by the commission of any complaint for which the committee finds sufficient cause to believe that the condition or conduct of the judge may be inconsistent with the good behavior required by article III, section 1 of the Constitution; or

(C) that there be a reasonable period of time in which the committee be authorized to attempt to address the specified matter raised in such complaint.

(2) A copy of the recommendation of the committee under this subsection, accompanied by a written explanation, shall be forwarded to the commission and the judge under inquiry.

(d) The Committee shall have no longer than thirty days from the receipt of the complaint from the commission in which to make a recommendation under subsection (c) of this section, except that the commission, in the interest of justice and for cause shown, may grant a reasonable extension upon application made by the committee.

(e) The committee may utilize existing staff employed by the circuit or court, or employees of other circuits or courts, or may request the Director of the Administrative Office of the United States Courts to procure personal services of experts and consultants, as authorized by section 3109 of title 5, as may be necessary to carry out the duties of the committee in any particular case under this chapter.

§ 384. Procedure before the Judicial Conduct and Disability Commission

(a) Upon receipt of the recommendation of a committee as provided in section 383 of this title, the Judicial Conduct and Disability Commission, pursuant to rules promulgated under section 391 of this title, shall either dismiss the complaint, initiate an investigation of its own to determine the nature and existence of any of the grounds specified in section 372(c) of this title for the involuntary retirement of a judge or in section 388 of this title for the removal or censure of a judge, or if necessary, authorize a reasonable period of time for the committee to attempt to address the specified matter raised in such complaint. Upon the conclusion of the time period, the committee shall either recommend that the case be dismissed or that the commission conduct a further investigation. Any judge whose condition or conduct is the subject of an investigation under this subsection shall be notified in writing of the pending investigation, and of his right to submit a written statement in his own behalf and of other rights under the rules promulgated under section 391 of this title.

(b)(1) The commission is authorized to administer oaths, order and otherwise provide for the inspection of books and records, and issue subpoenas for the attendance of witnesses and the production of papers, books, accounts, documents, and testimony relevant to the conduct of any investigation under this chapter. Such attendance of witnesses and the production of such evidence may be required from any place within the United States and its territories at any designated place of hearing within the United States upon payment of fees and expenses as prescribed by law.

(2) If a person who is the subject of a subpoena issued under paragraph (1) of this subsection refuses to obey such subpoena, the commission may invoke the aid of the district court of the district in which the subpoenaed party either resides or may be found. The district court may issue an order requiring such person to produce evidence or to give testimony relating to the matter under investigation. Any failure to obey such order of the district court may be punished by such court as contempt thereof.

(c) The commission, or a panel acting on behalf of the commission, after completion of its investigation and on the basis of the grounds specified in section 372(c) or 388 of this title, shall, by majority vote—

(1) dismiss any complaint which it finds to be frivolous, insufficient in law or fact, or outside the jurisdiction of the commission; or

(2) recommend to the Court on Judicial Conduct and Disability that it hold a hearing on any complaint for which the commission finds sufficient cause to believe that the condition or conduct of the judge may be inconsistent with the good behavior required by article III, section 1 of the Constitution.

(d) Whenever the commission dismisses a complaint under subsection (c)(1) of this section, section 383(a), or 384(a), the judge against whom the complaint was filed and the complainant shall be notified in writing of the action taken and the reason for the order of dismissal. Within ten days after such notification the complainant may petition the Court on Judicial Conduct and Disability to issue a writ of certiorari to review an order of dismissal. If certiorari is granted, the

court may summarily affirm, or, if it determines that the dismissal was arbitrary or capricious, reverse with directions for further investigation by the commission.

(e) Whenever the commission recommends under subsection (c) (2) of this section that a hearing be held in the court, it shall make and file a report with the court which includes the complaint made against the judge, the recommendation of the committee, the recommendation of the commission, and a summary of the factual evidence which its investigation has disclosed. Such report shall be entered on the records of the court. A copy of the report shall be forwarded to the judge under inquiry and to the complainant.

(f) The commission shall have no longer than ninety days from receipt of the recommendation of a committee in which to prepare and forward any report to the court, except that the court, in the interest of justice and for cause shown, may grant a reasonable extension upon application made by the commission.

(g) The commission may utilize its own staff or other employees of a circuit or court, or the executive director, with the approval of the commission, may request the Director of the Administrative Office of the United States Courts to procure personal services of experts and consultants, as authorized by section 3109 of title 5, as may be necessary to carry out the duties of the commission in any particular case under this chapter.

(h) The commission shall prepare an annual report to the Congress showing the number of complaints and the action taken on each complaint.

§ 385. Court on Judicial Conduct and Disability; duties of the Judicial Conference of the United States relating to proceedings with respect to involuntary retirement, removal and censure

(a) (1) The Judicial Conference of the United States shall elect annually one member of the conference to be presiding officer of the Court on Judicial Conduct and Disability to hear matters concerning the involuntary retirement, removal, or censure of a judge of the United States. A member of any committee who was a member of the committee which conducted the preliminary investigation relating to the condition or conduct of a judge shall not sit as a member of the court in a matter concerning the same judge. The chief justice shall neither participate in the election of the presiding officer nor be the presiding officer of the court.

(2) The presiding officer shall select six members of the conference to serve on the court with the presiding officer each for a one-year term pursuant to rules promulgated under section 391 of this title. Any temporary or permanent vacancy in a term of a member of the court shall be filled by the presiding officer. The court is established under article III of the Constitution of the United States as a court of record and may exercise all appropriate judicial powers incident or necessary to the jurisdiction conferred upon it by this title. Appropriate judicial powers include, but are not limited to, administering oaths, ordering and otherwise providing for the inspection of books and records, and issuing subpoenas for the attendance of witnesses and the production of papers, books, accounts, documents, and testimony relevant to the

conduct of a proceeding of the court. Such attendance of witnesses and the production of such evidence may be required from any place in the United States and its territories at any place designated for holding court within the United States. The clerk and marshal of the district court of the District of Columbia shall be the clerk and marshal of the court and shall be responsible for the maintenance of all records of the court and the service of process and execution of all orders of the court. When the court is sitting outside the District of Columbia, the clerk and marshal of another district court, with the approval of the court, may act as the clerk and marshal of the court. The court may hold court at the District of Columbia and at such other places within the United States and at such times as the court may designate by rule or order.

(b) Upon receipt of a report from the commission under section 348(e) of this title, the presiding officer shall convene the court at the earliest practical date to hear and decide the merits of the written complaint made against the judge. The commission, or its representative, shall appear, offer evidence in support of the report of the commission, and shall have the burden of proving its report before the court by clear and convincing evidence. Any judge whose condition or conduct is the subject of a hearing shall be given no less than ten days' notice of such hearing, shall be admitted to the hearing, may be represented by counsel, offer evidence in his own behalf, confront and cross-examine any witness against him, and have the right to compulsory process to obtain evidence or witnesses.

(c)(1) The commission shall on its own motion or upon the filing of a complaint pursuant to section 383 of this title compile information and maintain current records of all cases in which a judge has pleaded guilty, nolo contendere, or has been found guilty in a court of competent jurisdiction of a crime punishable as a felony under State or Federal law or of any crime under State or Federal law which involved moral turpitude.

(c)(2) The commission shall file a report directly with the court whenever it has determined pursuant to rules promulgated under section 391 of this title that a judge has pleaded guilty, nolo contendere, or has been found guilty in a court of competent jurisdiction of a crime punishable as a felony under State or Federal law or of any crime under State or Federal law which involved moral turpitude. The court may suspend such judge of the United States from the exercise of any judicial powers or prerogatives pending final disposition of the complaint against him. If the conviction of the judge is reversed, the suspension shall automatically terminate. If such a reversal is subsequently overturned, the suspension shall be automatically reinstated. In either case the clerk shall confirm the automatic termination or reinstatement by entering the appropriate order. Whenever the conviction of the judge becomes final, the court may, pursuant to rules promulgated under section 391 of this title, order his removal or censure from office under section 388 of this title.

(3) In all other cases, the court may suspend a judge who is the subject of an inquiry from the exercise of any judicial powers or prerogatives only upon the holding of the hearing as specified in subsection (b) of this section. The entry of an order specified in subsection (d)(1) (A) or (B) of this section may include an order of suspension.

(4) An order of suspension shall be issued upon a majority vote of the members of the court. During the period of suspension, the judge shall continue to receive the salary of his office. The court shall send a copy of the suspension order to the suspended judge, to the commission, and to the authority responsible for the assignment of business to judges within the court of the judge affected by the order. Upon receiving notification of a suspension order, the authority responsible for the assignment of business shall refer the assignment of business pending before the suspended judge to other judges as it may deem appropriate.

(d)(1) The court shall, in each case brought before it, order one of the following:

(A) involuntary retirement of the judge under section 372(c) of this title;

(B) removal from office of the judge under section 388 of this title;

(C) censure of the judge under section 388 of this title; or

(D) dismissal of the case.

(2) Each order under paragraph (1) of this subsection shall be made by a majority of the members of the court and shall be supported by clear and convincing evidence on the record.

(3) Each order of the court shall be in writing and the commission, the complainant, and any judge affected by such order shall receive a copy. Within ten days after such notification of an order under subsection (d), only the commission or the judge may file a petition for writ of certiorari to the Supreme Court under section 1259 of this title.

(e)(1) An order of the court directing involuntary retirement, removal of censure of a judge shall become final upon either the denial of a peition for writ of certiorari to the Supreme Court under section 1259 of this title, affirmance of the order by the Supreme Court, or expiration of the time for filing the petition. Upon the filing of the petition with the Supreme Court the order of involuntary retirement, removal, or censure shall be automatically stayed and the clerk of the court shall prepare an order to confirm the stay.

(2) In any case in which a judge is involuntarily retired or removed under this chapter, the court shall, at the time its order becomes final, certify to the President that a vacancy exists in the office from which the judge has been involuntarily retired or removed. The President shall appoint, by and with the advice and consent of the Senate, a successor to fill any vacancy caused by the involuntary retirement or removal of a judge under this section.

(f) Whenever a person, other than the judge who is the subject of an inquiry, refuses to give or produce evidence on the basis of his privilege against self-incrimination, the court may issue an order requiring that person to testify or produce evidence. The testimony given or evidence produced in compliance with that order, and any information directly or indirectly derived from that testimony or evidence, may not be used against the person so ordered in any criminal cases, except a prosecution for perjury, giving a false statement, or for otherwise failing to comply with that order. The court shall not issue an order compelling a person to testify or produce evidence under this subsection until thirty days after notification of the Attorney General of the United States of its intention to do so.

(g) All proceedings had in open court shall be recorded verbatim by shorthand, by mechanical means, or by electronic sound recording by an official court reporter. The court reporter shall transcribe and certify the record of proceedings and shall deliver the original records and transcript to the clerk of court. Notwithstanding the provisions of section 753 of this title, if the proceedings are reported and transcribed by the reporter appointed by the district court under that section, the Director of the Administrative Office of the United States Courts shall pay the court reporter a fee for the transcript at the rates established under section 753(f) of this title.

(h) The court may utilize existing staff employed by a cricuit or court or may request the Director of the Administrative Office of the United States Courts to procure personal services of experts or consultants as authorized by section 3109 of title 5, as may be necessary to carry out the duties of the court in any particular case under this chapter. The court may arrange for the attendance of witnesses, including witnesses not subject to subpoena. Each witness, other than an officer or employee of the United States, shall receive the same attendance fees and other amounts allowed by law to a witness in a civil case as provided in section 1821 of this title. The amount shall be paid by the United States marshal for all witnesses for the court upon certification of the clerk of court.

(i) The Federal Rules of Evidence shall apply to all proceedings before the court.

(j) The court shall act upon the concurrence of any four of its members.

§ 386. Disqualification of judges

A judge who is a member of a committee established under section 382 of this title, of the Judicial Conduct and Disability Commission, or of the Court on Judicial Conduct and Disability shall not sit in any proceeding of that body when it inquiries into his own condition or conduct, or when it inquires into a complaint filed by him against another judge.

§ 387. Confidentiality of proceedings

Unless authorized in writing by the judge whose condition or conduct is the subject of an inquiry under this chapter or otherwise authorized by this section, all matters filed with, all testimony or evidence given before, and all deliberations of a committee or the Judicial Conduct and Disability Commission in connection with the involuntary retirement of a judge under section 372(c) of this title or the removal or censure of a judge under section 388 of this title shall be confidential. Upon the filing of a report under section 384(e) of this title with the Court on Judicial Conduct and Disability, the contents of the written complaint, the recommendation of the committee, the report of the commission, and all documents and proceedings before the court shall be made public. Any participant in the proceedings who violates the provisions of this section shall be in contempt of court and may be fined not more than $5,000 or imprisoned not more than one year, or both.

§ 388. Removal or censure of judges

(a) A judge of the United States may be removed from office or censured in accordance with the procedures established in this title only upon a finding by the Court on Judicial Conduct and Disability that the conduct of such judge is or has been inconsistent with the good behavior required by article III, section 1 of the Constitution.

(b) Conduct which shall be deemed to be inconsistent with good behavior includes, but is not limited to, willful misconduct in office, willful and persistent failure to perform duties of the office, habitual intemperance, or other conduct prejudicial to the administration of justice that brings the judicial office into disrepute.

(c) Upon a final order of removal, the office of the judge shall become vacant and the entitlement to the salary of the office shall terminate. For the purposes of section 376(g) of this title, a judge removed from office shall be deemed to be a judge who resigned from office without entitlement to retirement salary.

§ 389. Justices of the Supreme Court; report of impeachment or censure

(a) Any person may file a complaint with the Judicial Conduct and Disability Commission setting forth the conduct of a Justice of the United States, alleging that such conduct violates the good behavior standard required by article III, section 1 of the Constitution. All complaints shall be in writing and verified or subscribed in the manner set forth in section 1746 of this title. The commission, acting through its executive director, shall dismiss by written order, without prejudice, any complaint found to be improperly verified or subscribed, or, after preliminary inquiry, with prejudice, any complaint which is frivolous, or outside the jurisdiction of the commission. Complaints which are outside the jurisdiction of the commission include, but are not limited to, complaints relating to the merits of any decision or procedural ruling of a Justice and complaints relating to the conduct of a Justice which is not connected with his judicial office or which does not prejudice the administration of justice by bringing the judicial office into disrepute.

(b)(1) Any complaint not dismissed by the commission, acting through its executive director, pursuant to subsection (a) of this section, shall be investigated by the commission, or a panel acting on behalf of the commission under section 381(b)(2) of this title, to determine whether there is sufficient cause to believe that the conduct of the Justice may be inconsistent with the good behavior required by article III, section 1 of the Constitution. A Justice whose conduct is the subject of an investigation under this section shall receive a copy of the complaint and shall be notified in writing of the pending investigation, of his right to submit a written statement in his own behalf, and of other rights under rules promulgated under section 391 of this title.

(2) The commission, or a panel acting on behalf of the commission, after completion of its investigation, shall, by majority vote—

(A) dismiss any complaint which finds frivolous, insufficient in law or fact, or outside the jurisdiction of the commission; or

(B) recommend to the Court on Judicial Conduct and Disability that it hold a hearing on any complaint for which the commission finds sufficient cause to believe that the conduct of the Justice may be inconsistent with the good behavior required by article III, section 1 of the Constitution.

(3) Whenever the commission dismisses a complaint under subsection (a) of this section or under paragraph (2)(A) of this subsection, the Justice against whom the complaint was filed and the complainant shall be notified of the action taken and the reason for the dismissal. Within ten days after such notification the complainant may petition the Court on Judicial Conduct and Disability to issue a writ of certiorari to review an order of dismissal. If certiorari is granted, the court may summarily affirm, or, if it determines that the dismissal was arbitrary or capricious, reverse with directions for further investigation by the commission.

(4) Whenever the commission recommends under paragraph (2)(B) of this subsection that a hearing be held in the court, it shall make and file a written report with the court which includes the complaint made against the Justice, the recommendation of the commission, and a summary of the factual evidence which its investigation has disclosed. Such report shall be entered on the records of the court. A copy of the report shall be forwarded to the Justice under inquiry and to the complainant.

(5) The Commission shall have no longer than one hundred and twenty days from the initial filing of a complaint in which to prepare and forward a report to the court, except that the court, in the interest of justice and for cause shown, may grant a reasonable extension upon application made by the commission.

(c)(1) Upon receipt of a report from the commission under subsection (b)(4) of the section, the presiding officer of the court shall convene the court at the earliest practical date to hear and decide the merits of the written complaint made against the Justice. The hearing shall be conducted under subsections (a), (b), (f), (g), (h), (i) and (j) of section 385 of this title.

(2) the court shall, in each case brought before it—

(A) recommend to the House of Representatives the impeachment of any Justice whose conduct is found to be an impeachable offense as defined in article II, section 4 of the Constitution; or

(B) recommend to the House of Representatives the censure of any Justice whose conduct is found to be inconsistent with the good behavior required by article III, section 1 of the Constitution and whose conduct is not found to be an impeachable offense as defined in article II, section 4 of the Constitution; or

(C) order the dismissal of the case.

(3) Each determination of the court under paragraph 2 of this subsection shall be made by a majority of the members of the court and shall be supported by clear and convincing evidence on the record.

(4) Conduct which shall be deemed to be inconsistent with good behavior includes, but is not limited to, willful misconduct in office, willful and persistent failure to perform duties of the office, habitual intemperance, or other conduct prejudicial to the administration of justice that brings the judicial office into disrepute.

(5) Whenever the court recommends to the House of Representatives the impeachment or censure of any Justice under paragraph (2) (A) or (B) of this subsection, it shall prepare a written report which includes the complaint made against the Justice, the recommendation of the court, the recommendation of the commission, a copy of the transcript of the hearing, and specific findings made by the court. Such report shall be submitted to the House of Representatives for appropriate action. A copy of the report shall be forwarded to the Justice under inquiry and to the complainant. There shall be no judicial review of a recommendation for the impeachment or censure of a Justice.

(6) Whenever the court orders a complaint dismissed under paragraph (2) (C) of this subsection, the Justice against whom the complaint was filed and the complainant shall be notified in writing of the action taken and the reason for the dismissal. There shall be no judicial review of an order of dismissal.

(d) Unless authorized in writing by the Justice whose conduct is the subject of inquiry under this chapter or otherwise authorized by this subsection, all matters filed with, all testimony or evidence given before, and the deliberations of the commission in connection with a recommendation for the impleachment or censure of a Justice under this section, shall be confidential. Upon the filing of a report under section 389(b)(4) of this title, the contents of the written complaint, the report of the commission, and all documents and proceedings before the court shall be made public. Any participant in the proceedings who violates the provisions of this section shall be in contempt of court and may be fined not more than $5,000 or imprisoned not more than one year, or both.

§ 390. Claims of involuntarily retired judges relating to judicial duties

(a) The Court on Judicial Conduct and Disability shall hear and determine any claim for assignment as authorized under section 294 of this title by a judge retired under section 372(c) of this title who alleges that his mental or physical disability has improved to the extent that he is able to efficiently perform the duties of the judicial office from which he was retired.

(b) The court may prescribe by rule such procedures as may be appropriate to the consideration and disposition of these claims. The court shall, by majority vote, issue an appropriate order with respect to such claim and shall transmit such order to the authority responsible for the assignment of judicial duties to retired judges within the circuit or court of the judge affected by such order.

§ 391. Rules of procedure; Court on Judicial Conduct and Disability, Judicial Conduct and Disability Commission, and committees; attorneys' fees

(a) The Judicial Conference of the United States shall promulgate rules of procedure for the Court on Judicial Conduct and Disability and the Judicial Conduct and Disability Commission.

(b) The Judicial Conference of the United States shall promulgate rules of procedure for the committees established under section 382 of this title, or authorize the judicial council of each circuit, the Court of Claims, the Court of Customs and Patent Appeals, and the Customs

Court to promulgate rules of procedure for their respective committees. Such rules shall be consistent with the rules promulgated for the court and the commission under subsection (a).

(c) All rules promulgated under this section may be modified at any time by the Judicial Conference of the United States and shall be a matter of public record.

(d) A judge or Justice whose condition or conduct is the subject of complaint shall be reimbursed for a reasonable attorney's fee and for other costs reasonably incurred in proceedings before the commission, the Court on Judicial Conduct and Disability, and the Supreme Court from funds appropriated to the Judicial Conference of the United States if such complaint is finally dismissed.

§ 392. Intervention; amicus curiae; mandamus

(a) No person shall be granted the right to intervene or appear as amicus curiae in any proceeding before a committee established under section 382 of this title, the Judicial Conduct and Disability Commission, or the Court on Judicial Conduct and Disability.

(b) Notwithstanding any provision of law, the Court of Judicial Conduct and Disability shall have exclusive original jurisdiction to hear any action in the nature of mandamus directed against a committee established under section 382 of this title or the commission.

CHAPTER 37—UNITED STATES MARSHALS

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§ 569. Powers and duties generally; supervision by Attorney General

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(b) United States marshals shall execute all lawful writs, process and orders issued under authority of the United States, including those of the courts and Government of the Canal Zone, *and of the Court on Judicial Conduct and Disability and the Judicial Conduct and Disability Commission under chapter 18 of this title*, and command all necessary assistance to execute their duties.

CHAPTER 41—ADMINISTRATIVE OFFICE OF UNITED STATES COURTS

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§ 604. Duties of Director generally

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(f) The Director shall provide facilities and pay necessary expenses incurred by the Judicial Conduct and Disability Commission under chapter 18 of this title, including mileage allowance and witness fees, at the same rate as provided in section 1821 of this title, and fix the compensation not otherwise fixed by law of employees, experts, and consultants of the commission.

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§ 610. Courts defined

As used in this chapter the word "courts" includes the court of appeals and district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, the District Court of the Virgin Islands, the Court of Claims, the Customs Court and Patent Appeals. **[**and**]** the Customs Court **[**.**]**, *and the Court on Judicial Conduct and Disability.*

CHAPTER 81—SUPREME COURT

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Sec.
§ 1259. Court on Judicial Conduct and Disability; appeal of order

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(a) Upon the petition of an aggrieved judge, the Supreme Court may review by writ of certiorari an order of the Court on Judicial Conduct and Disability under chapter 18 of this title that such judge be involuntarily retired, removed, or censured for a condition or conduct inconsistent with the good behavior required by article III, section 1 of the Constitution.

(b) Upon the petition of the Judicial Conduct and Disability Commission, the Supreme Court may review by writ of certiorari, an order of the court under chapter 18 of this title that a complaint against a judge be dismissed.

(c) Each petition shall be filed within ten days after receipt of the written notice of the order of the Court on Judicial Conduct and Disability.

STATEMENT OF THE CONGRESSIONAL BUDGET OFFICE

Pursuant to the Rules of the Senate and the Congressional Budget Act of 1974, the following is the cost estimate of S. 1423, as amended, prepared by the Congressional Budget Office.

JUNE 29, 1978.

Hon. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the attached cost estimate for S. 1423, the Judicial Tenure Act.

Should the Committee so desire, we would be pleased to provide further details on the attached cost estimate.

Sincerely,

ALICE M. RIVLIN, *Director.*

CONGRESSIONAL BUDGET OFFICE—COST ESTIMATE

JUNE 29, 1978.

1. Bill number: S. 1423.
2. Bill title: The Judicial Tenure Act.
3. Bill status: As ordered reported by the Senate Committee on the Judiciary 21, 1978.
4. Bill purpose: This bill establishes a procedure, in addition to impeachment, for the retirement of disabled members of the Judiciary of the United States and the removal of those whose conduct is or has been inconsistent with the good behavior required by article III, section I of the Constitution.

In addition, the bill establishes in the judicial branch of the government, a Judicial Conduct and Disability Commission and the Court on Judicial Conduct and disability. The Commission is to be composed of 11 members who will review any complaints filed concern-

ing the conduct or the condition of any judge of the United States. The Court is to hear any case relating to the removal, censure, or involuntary retirement of a judge of the United States. The bill also authorizes the payment of attorney's fees to a judge if he should prevail when a complaint results in a hearing before the Commission, Court, or the Supreme Court.

5. Cost estimate:

	Thousands
Fiscal year 1978:	
Salaries, benefits, and expenses	-----
Fiscal year 1979:	
Salaries, benefits, and expenses	$201
Fiscal year 1980:	
Salaries, benefits, and expenses	238
Fiscal year 1981:	
Salaries, benefits, and expenses	253
Fiscal year 1982:	
Salaries, benefit, and expenses	268

6. Basis of estimates: The bill has an effective date of January 1, 1979. Therefore, fiscal year 1979 costs reflect three-quarters of the first year cost. The bill authorizes the Judicial Conference to appoint, for the Judicial Conduct and Disability Commission, an executive director who may also appoint such employees for the Commission as necessary. The fiscal year 1979 total cost of $201,000 includes (1) the salary and 18 percent benefits of the executive director and a secretary, plus administrative support from the Judicial Conference ($60,000); (2) travel expenses for the staff and the Commission ($80,000), (3) hearing and reporting costs ($6,000); (4) printing, stationary and communications costs ($9,000); (5) rental of office space ($13,000); and (6) 20 percent of the sum of the preceding items to defray expenses in the first year of startup for the Commission. It is expected that very few cases will arise which fulfill the criteria for the awarding of attorney's fees. Therefore, this estimate does not include costs for that provision. Recurring costs have been inflated from 1979 based on CBO projections of increases in federal pay and in the costs of services purchased by the government.

7. Estimate comparison: None.

8. Previous CBO estimate: On January 27, 1978, CBO prepared a cost estimate of S. 1423 as drafted by the Subcommittee on Improvements in Judicial Machinery, Januray 18, 1978. Fiscal year 1979 costs are slightly lower in the current version due to the change in effective date from October 1, 1978 to January 1, 1979.

On April 25, 1978, CBO prepared a cost estimate of S. 1423 as ordered reported by the Subcommittee on Improvements in Judicial Machinery of the Senate Committee on the Judiciary, April 12, 1978. The costs in this estimate are the same.

9. Estimate prepared by: Thomas J. Elzey.

10. Estimate approved by:

ROBERT D. HARRIS,
(For JAMES L. BLUM,
Assistant Director for Budget Analysis).

ADDITIONAL VIEWS OF SENATOR BIRCH BAY ON S. 1423, AS AMENDED, THE JUDICIAL TENURE BILL

Although I appreciate the considerations which have led the majority of the members of the Judiciary Committee to approve S. 1423, I cannot agree with their decision. Because this bill is in my opinion one of the most drastic and far-reaching pieces of legislation on which the committee will exercise its judgment, I feel it is important to express my concerns.

There are two reasons for my dissent on this legislation: first, there can be very little doubt that it exceeds the constitutional authority of both the Congress and the Judiciary; and second, it establishes procedures and sanctions which threaten the independence and character of the federal judiciary.

I have no disagreement with the motivation behind this bill. We are all convinced of the need for a wise, conscientious and responsible judiciary. We concur in the necessity of having the ability to remove judges who have seriously betrayed both their oaths to uphold the constitution and laws of the United States and their duty to assure the administration of justice with which they are entrusted.

I also concur with the majority in viewing the growth of the federal judiciary as a mixed blessing, in that it provides citizens with the means to address their grievances with some degree of dispatch, but at the same time worries us by its very size and numbers. No longer is the federal bench the select handful of jurists which existed at the beginning of our life as a nation. By sheer common sense and the laws of chance we are wary that there will be more bad apples in the lot. However, I am concerned that with S. 1423 we are moving precipitously toward undefined goals, without a clear and consistent view of the grounds which should be sufficient to remove federal judges. What judges are we really willing to go to such radical means to be rid of? The slothful, the criminal, the unpopular? This bill gives no clear standard of acceptable or unacceptable behavior. Further, I fear that with this bill we are creating new machinery, of dubious constitutionality, to achieve what might well be accomplished by less drastic means well within constitutional bounds: better, more thorough selection methods, strengthened inter-judicial circuit discipline, and refined pre-impeachment procedures by which impeachment could become an effective mechanism when deemed to be necessary.

S. 1423 IS UNCONSTITUTIONAL

The majority report takes the position that since the constitutionality of S. 1423 is a question which can ultimately only be decided by the Supreme Court, Congress should not hesitate to pass the law and let the Court make its decision. Certainly, the Congress has passed legislation knowing that it posed serious constitutional issues. The Voting Rights Act is as good an example as any. However, there is a

great difference between legislation which is arguably unconstitutional and that which is very probably unconstitutional. A proposed law which poses serious constitutional issues demands the most careful scrutiny by the legislative branch. If it is very probably unconstitutional, it should not be passed. Certainly the constitutional problems with S. 1423 are sufficiently serious to warrant close examination of the policy questions which are raised. With no prescience of what a decision by the Supreme Court might be, I find the arguments for the constitutionality of S. 1423 to be very troubling.

THE GOOD BEHAVIOR CLAUSE IS NOT A CONSTITUTIONAL BASIS FOR THE REMOVAL OF FEDERAL JUDGES

To summarize the relevant constitutional issues briefly, Article II of the Constitution expressly provides that all civil officers shall be removed from office by impeachment; Article I states that the Congress shall have the sole power of impeachment. The majority believes, however, that another means of removal exists within the Constitution in the good behavior clause of Article III, § 1, and maintains that for 190 years this alternate removal mechanism has been available whenever the Congress wanted to employ it, but has simply never been used. The majority brushes over the fact that throughout the country's history, the idea that the "good behavior" clause was intended to provide a way to get rid of federal judges was not proposed. Even contemporaries of the Framers who felt strongly that it was a mistake to confine removal of judges to the impeachment process never suggested that article III provided such an alternative. Historical precedent, caselaw, and statutory construction all sustain the traditional view that the Constitution provides only one means for removing a judge, the impeachment process.

The standard for impeachment under article II is treason, bribery, or other high crimes and misdemeanors. The proponents of S. 1423 grant that Congress has the exclusive power of removal for commission of the serious misconduct which is impeachable. They contend that a judge whose behavior falls in the gap between "good behavior" and "high crimes and other misdemeanors" is subject to removal by other judges through machinery set up within the judicial branch itself. In other words, a higher standard of conduct is imposed on judges than other civil officers.

To sustain this argument, it seems necessary that three assumptions withstand scrutiny: first, that the Constitution allows the creation of an alternative removal mechanism; second, that the "good behavior" clause requires a higher standard of conduct in the judiciary than would be imposed by impeachment; and third, that S. 1423's removal standards ("conduct which is or has been inconsistent with the good behavior required by article III") does not impinge on the exclusive congressional power of removal by impeachment.

IMPEACHMENT IS THE SOLE MEANS OF REMOVAL OF JUDGES

The proposition that Article III's good behavior clause provided an alternate means of removal of judges was first offered in a law review article by Burke Shartel in 1930, and has recently been argued by Professor Raoul Berger in his work on impeachment. Authority in

the United States has been consistent, however, that impeachment was the sole means of removal of federal judges because of the language of Articles I and II that the House and Senate are granted the "sole power" to impeach and convict office holders. Any argument to the contrary must meet the heavy burden created by this express constitutional provision. The majority places its argument primarily on the slender shoulders of the precedent in English common law of the obscure writ of *scire facias*, an argument derived from Berger and Shartel.

The Founding Fathers, the proponents say, must have intended an alternative means of removal of judges within the judicial branch itself since *scire facias* proceedings were available at common law. This proposition has been closely analyzed by many constitutional authorities and found to be wanting. Their work is summarized in "The Report on The Removal of Federal Judges Other Than By Impeachment by the New York Bar Association."

The theory of *scire facias*, as the majority report explains, was that a grant of office imparted an office or estate for the life of the grantee terminable by his death or a breach of good behavior. The judiciary was empowered to issue a writ of *scire facias* to initiate a civil proceeding for the termination or forfeiture of the office. The object of the writ was to remove the officer without penalty. A close examination of the writ does not sustain the conclusion drawn by the majority.

First of all, most authorities cite a lack of historical evidence that the framers of the Constitution even had knowledge of the generally discarded writ of *scire facias*, which had admittedly never been used to remove a judge. *Scire facias* was never included in any Revolutionary state constitution, nor was it considered at the Constitutional Convention.

It is admitted by all the scholars that there is no record of the writ having ever been used to attack a letter patent (granting "good behavior tenure") in a Colonial court. Further, the positions subject to removal by the writ were only of minor court officials, not full-fledged judges. Officials so removed included such obscure officers as filazers, remembrancers of the Exchequer, cord recorders, postmen and auditors. No judge was ever removed by *scire facias* in England, even though the writ technically survived until 1947. The writ was not abolished in America until 1938. By the majority's interpretation, any federal judge could have removed another judge up until that time under the theory of *scire facias* simply by concluding that his brother or sister judge in effect breached a condition of his appointment by engaging in something that was not "good behavior." Not one judge has been so removed. Moreover, it is interesting to speculate what would have happened if a federal judge had ever tried to employ *scire facias* on another.

The undocumented precedent of *scire facias* is far too slender a reed to support such a radical change of practice that could effectively destroy the constitutionally mandated life tenure of federal judges and give other judges broad new removal powers.

Other evidence argues against the constitutionality of any other means than impeachment for removal of judges. Early drafts of the Constitution gave impeachment powers to the Supreme Court; after long debate, it was decided that the best and most impartial tribunal

would be the Senate, not members of the judicial branch. Further, there is overwhelming evidence that the Framers themselves considered impeachment the sole means of removal. Hamilton, in the Federalist No. 79 expressly said so. Jefferson also held that opinion. Justices Marshall, Story and Kent concurred. As the eminent constitutional student, Phillip Kurland, has said, it is "pellucidly clear . . . that the intention of the Framers was to make impeachment the sole means of removal."

The majority argues that other branches of government under the Constitution have alternate means of removal besides impeachment inherent within their own branch. Distinctions can clearly be drawn, however. An exception is expressly provided within the Constitution for the legislative branch (Art. 1, § 5). The Supreme Court decided that the President can remove certain federal officers performing executive duties within the executive branch for the reason that he appointed them. *Myers* v. *U.S.*, 272 U.S. 52 (1926). The same obviously cannot be said for the judiciary. The Court further held in *Humphrey's Executor* v. *U.S.*, 295 U.S. 602 (1935) that the President is restricted in removing such an official as a commissioner of the FTC because his is a quasi-legislative, quasi-judicial role requiring independence from other officials or departments of government in order to function properly. The same might well be said in respect to the independence of a judge subject to the censure of the judiciary, as well as of the legislature.

It is also worth drawing an analogy to the 25th Amendment, which was drafted to continue the consistency of our constitutional pattern. The 25th Amendment provides that a President may only be removed for inability to perform his duties upon the judgment of the Congress and not the determination of his own cabinet. A disagreement between a judge and his fellow judges over his judicial inabilities should likewise be resolved by the House and Senate, i.e. impeachment, and not by giving certain judges powers over the removal of their peers.

The Constitution is clear that judges are protected from members of their own branch, as well as the legislative and executive.

THE GOOD BEHAVIOR CLAUSE DOES NOT IMPOSE A HIGHER STANDARD OF CONDUCT

Since it is conceded by the majority that Congress has the sole and exclusive power of removal for the commission of impeachable offenses, in order for S. 1423 to be constitutional, it is necessary that it prove that the "good behavior" clause provides a higher standard of conduct for judges than that required by impeachment. I do not believe that this proof can be sustained.

The majority asserts that the language of Art. III of the Constitution which says that "the judges . . . shall hold their offices during good behavior" was intended by the writers to establish that judges who did not conform to good behavior should not be able to continue to hold office. These assertions again rest squarely on the scholarly opinions of Shartel and Berger. The great weight of historical research done by other constitutional experts, however, argues that tenure during good behavior was intended to differentiate from tenure "at the King's pleasure." It was rebellion against tenure "during the King's pleasure" which had led to the Act of Settlement in England in 1701,

and it was the monarchy's arbitrary power over their judges which led the Colonists to include in their list of grievances against the King in the Declaration of Independence, "He has made Judges dependent on his will alone, for the tenure of their offices, and the amount and payment of their salaries." In other words, to the Founding Fathers, a good behavior grant of tenure mean that the executive was restricted in its powers of removal, not that it was a separate standard of conduct.

Further, although in our history we have never definitively established the standard for impeachment, it is generally agreed that it is not so high as an indictable offense, and indeed many scholars maintain that under 18th Century common law, "misdemeanors" was synonomous with "misbehavior." Certainly our record of impeachments would uphold that interpretation. In 1804, Judge John Pickering was impeached and convicted on several charges, including drunkenness and blasphemy. Judge George English was impeached, and subsequently resigned, on counts including conduct bringing the administration of justice into "contempt and disgrace." In 1936, the Senate convicted Judge Halsted Ritter on a count of misbehavior.

If a judge can be impeached for misbehavior then the good behavior clause creates no separate or higher standard of conduct. Where, then, is the constitutionality of S. 1423?

The majority also contends that the good behavior clause would allow removal for disability. Its authority is in Mr. Berger's analysis that involuntary absence from office caused by mental or physical illness was historically grounds for forfeiture of a good behavior office if not for impeachment. Other scholars, including Shartel himself, have taken issue with this interpretation, however, and argued that a good behavior tenure office was not forfeited by disability. It is clear that at the time of the Constitutional Convention it was thought that good behavior tenure excluded removal for disability. For example, a critic of Art. III, Sec. 1 complained in The Antifederalist Papers, "there is no authority that can remove them from office for any errors or want of capacity." Perhaps as strong a proof as any that insanity, for instance, was not regarded as a cause for removal is in the fact that in the first impeachment proceeding (Judge Pickering in 1804) insanity was raised as a defense by the judge's defenders. No one thought to prosecute for insanity.

It is important to remind the majority in conclusion, however, that many of the problems of judicial disability are already addressed by statute without provision for removal, and therefore no questionable unconstitutional removal mechanism for disability is necessary. 28 U.S.C. 372(b) allows the Judicial Conference to certify to the President that a judge is unable to discharge his duties because of a permanent disability, and the President may then appoint another judge to take over his duties.

THE REMOVAL STANDARDS OF S. 1423 ARE AN INFRINGEMENT ON THE CONGRESSIONAL POWER OF REMOVAL

If S. 1423 is not intended by its supporters to provide a removal mechanism which will operate for the same misconduct as will the impeachment process, serious questions arise about its removal standards, even if we assume, wrongly I believe, that a gap exists between

good behavior and impeachable offenses. In other words, if the bill is to be constitutional, the majority must be able to show that the standards for removal by the judicial branch in S. 1423 do not infringe on the congressional power of removal by impeachment.

The general standard of the bill, "conduct which is or has been inconsistent with the good behavior required by Art. III" is at best vague. The further guidelines for bad behavior in Sect. 388 of the bill are based on terms which state supreme courts have employed in cases involving state judges. As observed above "habitual intemperance" and "conduct prejudicial to the administration of justice" are grounds which have already been applied for impeachment and conviction. What lower standard could reasonably be applied to define the bounds to good behavior as something less than an impeachable offense?

In a disturbing provision, Section 385(c)(6) of S. 1423 authorizes removal of judges convicted of a felony, or a crime involving moral turpitude. This is in clear conflict with and infringes on the standard for impeachment, "high crimes and misdemeanors", since by definition criminal behavior is the subject of the impeachment process. The opinion of Berger himself seems to contribute to confusion along this line. In 1976 he testified on S. 1110, the predecessor to this bill, that the purpose of the legislation is to catch "little crooks". It appears then that at least some of the standards embodied in S. 1423 are overinclusive.

If we were willing to concede however, that a gap does exist between good behavior and impeachable behavior to which the provisions of S. 1423 might validly apply, an ironic incongruity is the final result. With S. 1423 Congress would be creating a relatively easy mechanism by which it might rid itself of judges who have been guilty of "bad behavior" falling below the level of impeachable behavior. For the serious misconduct arising to the strictest standards of high crimes and misdemeanors, that is, indictable offenses, the cumbersome mechanism of impeachment remains. So S. 1423 would create a system for relatively easy removal of judges for failing to behave properly, but removal of criminals from the bench would be much harder.

S. 1423 AND SUPREME COURT JUSTICES

S. 1423 was amended in subcommittee in response to objections raised by the Judicial Conference and others to allow for different proceedings in the case of a Supreme Court Justice. It now provides for a recommendation for impeachment to be made to the House following a trial by the judicial court. As a final constitutional question, I would ask if this recommendation would not amount to an advisory opinion from an article III court, proscribed since *Hayburn*'s Case 2 U.S. (2 Dall.) 409, 410 n. (a) (1972).

POLICY CONCERNS DO NOT JUSTIFY THIS LEGISLATION

The question which continues to trouble me after study of S. 1423 is what judges we want to be able to get rid of by this legislation and for what reasons. Since as has been argued in the preceding sections, there is small reason to believe that S. 1423 offers any new ground on which removal may be based, the question might well be, Do we

simply want new ease of removal, and not necessarily removal for different kinds of misconduct? Or is it rather, that because of our frequent disaffection with unpopular opinions by the judiciary we want to be provided with new justifications for their removal? In any case, as in any major change in the way in which our constitutional system has functioned, the burden rests on the proponents of S. 1423 to prove that the relative ease of removal offered by this bill is worth the possible threat to judicial independence, independence, I have tried to argue, which the Constitution has provided should be protected from invasion by more powerful members of the judicial branch as well as by the legislative and executive branches. I would therefore hope that the Senate would fully address these issues of policy before it decides to approve or disapprove S. 1423.

First of all, the Senate must be convinced that there exists a problem among the Federal judiciary which demands a radical, new situation. Although I initially assumed such was the case, I have heard little of such proof in the Judiciary Committee. I am aware that some 36 States now have disciplinary commissions but the analogies between the State courts and the Federal bench are not strong. Interestingly, 26 of these commissions were established by constitutional amendments, presumably because mere legislation, such as S. 1423, was believed to be unconstitutional. Furthermore, the record on the bill discloses very little evaluation of these State policing systems, and in fact they have not been immune from criticism.

I cannot help but be aware of the dissatisfaction with which some judges, as authors of unpopular opinions, are held by our constituents, but the merits of opinions and judicial procedures are not, of course, intended to be legitimate subjects for complaint under this legislation. The press now and again presents a case against Federal judges, but what strikes me from these accounts is, first, that they are rare and isolated, and second, that in most instances the problems have been taken care of without the apparent need for legislation of this kind. Are the curernt means of handling the problems which will inevitably arise from time to time sufficient, or could they be strengthened at different points to make them adequate without establishing this radical, new ssytem?

At the present time, the chief judge handles most of the troublesome incidents as they arise in his district on an informal basis. The judicial council of the circuit has authority under 28 U.S.C. 332 to "make all necessary orders for the effective and expeditious administration of the business of the courts within its circuits." In addition, the Judicial Conference is empowered under 28 U.S.C. 372(b) to certify to the President the disability of any judge to fulfill his duties. And finally, there is the impeachment process. Improvement of these methods of control, along with greater care and investigation at the appointment of Federal judges might be sufficient solutions to the problems which exist.

It is not irrelevant at this point to take a look at the record on impeachment. The process may not have been as ineffective a means of discipline as it has been accused of being. Only four judges have been impeached and convicted but 55 have been charged on the floor of the House, an average of one every 3 or 4 years. Thirty-three have been charged with treason, bribery, or other high crimes and misdemeanors.

Twenty-two have resigned rather than face Senate trial and public exposure. In all, one judge has left the Federal judiciary under pressure from impeachment approximately every 7 years.

Circuit Court Judge Clifford Wallace has proposed alternative legislation which would create greater disciplinary powers within the judicial circuits, with a final report from the Judicial Conference transmitted to the House in a case of serious misconduct. This proposal is among several seeking to improve the present system which I would hope could be the subject of hearings before the Senate decides on more drastic solutions provided by S. 1423. Certainly, also, the Congress should face its responsibilities under the Constitution and study methods by which impeachment will continue to be workable in the modern world.

The second question which the Senate should ask itself before it approves legislation such as S. 1423, is whether such a solution will create its own problems. There is, first of all, the obvious question which is presented upon the creation and vesting of power in any new bureaucracy: Will it abuse its power?

The striking thing about the structure of the bureaucracy created by S. 1423 is that its new and awesome power to remove fellow judges can be closely concentrated. The layers of the new bureaucracy are to be manned potentially by a small, tightly knit group. The 12-man Commission will represent only a few States. It will report its findings to the seven-member court, all of whom are to be chosen from the membership of the Judicial Conference by the presiding officer. He himself is selected from within the Conference. The Commission, through its Director (also chosen by the Judicial Conference) will initially screen complaints, a crucial step in the procedure, since an unscreened complaint is then sent back to the circuit of origin where investigation will be opened against the complained of judge. A hired staff which does not winnow out frivolous or ill-conceived complaints at this stage will be performing serious harm against the judge who has wrongly been accused of misbehavior. The Commission will conduct its own, in-depth investigation after receiving the report of the circuit committee and if it in turn recommends trial by the court, the Commission will become the prosecutor. Obviously, there is a danger of a close-knit overzealous bureaucracy seeking to justify its own existence by finding transgressions in all manner of judicial action, perhaps even in the nature of decisions and opinions.

By far the greatest damage which could result from an alternate removal mechanism of judges judging judges would be the chilling effect it could have on the individuals on the bench. Philip Kurland has remarked that disciplinary systems in the States operate as "polite blackmail" by other judges and the bar.

> I shudder to think how early the Federal courts might have been deprived of the services of Judge Learned Hand under such a discipline system as California's, for politeness to counsel and a willingness to tolerate fools gladly were not among his virtues, and it is only such virtues as regular attendance at the courthouse that the policing system seem capable of evoking from timid judges.

Justices Black and Douglas protested surveillance by other judges in the strongest terms in their well-known dissent to the *Chandler*

case *Chandler* v. *Judicial Council*, 398 U.S. 74 (1970). *Chandler* did not go to the merits of the constitutional question of whether judges sitting on the judicial council were empowered to suspend the individual activities of a fellow judge. It did, however, serve too give a modern day forum to Black and Douglas to reiterate the fears of loss of independence voiced by leading jurists dating back to Chief Justice Marshall. A survey taken by Senator Sam Ervin in 1970 illustrated this fear sharply when fewer than 1 percent of the Federal judges supported the concept of the Tydings bill, predecessor to S. 1423. A like survey ordered by the Judicial Conference in March of this year has not yet been completed, but I believe the Senate should watch for its results carefully to evaluate the views of those who could judge and be judged.

In a very real way, removal within the judicial branch could have a profound effect on the Federal bench. The caliber of the men and women attracted to the judiciary might well change if they knew that while in the performance of their duties they could be subject to a barrage of public complaints and to open public scrutiny. The confidentiality provisions of S. 1423 to the contrary, the recent case, *Landmark Communications, Inc* v. *Virginia* 46 U.S.L.W. 4389 (May 1, 1978) holds that the first amendment does not allow criminal punishment of the press for divulging or publishing information of confidential proceedings. At the farthest extreme, we would all suffer if subtle pressures from fellow judges or the bar were brought to bear on those whose judicial opinions on Federal statutory or constitutional issues were "unpopular." The leadership taken by the courts on matters of individual rights are too important to run any risks of being jeopardized in the name of responsiveness to public opinion.

The final question to be answered about S. 1423 is what is "bad behavior"? The majority of the Judiciary Committee tells us it is not crimes or even serious misconduct, for these must be handled by impeachment (although as noted above section 385 of S. 1423 provides that removal may be automatic upon final conviction). It has nothing to do with the merits of a decision nor with procedures at trial. The guidelines of section 388 say it is willful misconduct, willful failure to perform duties, habitual intemperance, or conduct prejudicial to the administration of justice. These are broad, vague terms at best. If the misconduct is not serious enough to be impeachable, does it merely rise to the level of triviality? Examples furnished us in the majority report leave me with a certain amount of skepticism. Is it for vulgar horseplay and obscene conversations with clerks (*Geiler* v. *Commission on Judicial Qualifications*, 515 P. 2d, (California 1973) that we are erecting this elaborate mechanism? Surely there is a less drastic method of controlling such situations. It is cases like this which make Kurland's assessment of Learned Hand's vulnerability under such a system seem very possible. Such examples also make us realize how easily censure and even removal of judges who consistently write unpopular opinions could be accomplished. Raoul Berger in his 1976 testimony expressed his opinion that judges could be removed for "ignorance." Finally, we are again stuck with the irony of being able to remove a judge guilty of obscene conversations with relative ease, but being able to get rid of a judge who has committed murder or treason or accepted bribes only through impeachment.

I firmly believe that it is the responsibility of the Congress to help insure that we have an effective and responsible Federal judiciary. In that wise, it is the duty of the Senate to play its role in the selection process well, especially since the number of judges will increase rapidly. It is the duty of both Houses to see that the impeachment and trial process work. Certainly much can be done in that area. Congress should be taking a look at other means by which the disciplinary process could be strengthened. S. 1423, however, appears to create a solution worse than the problem. Of dubious constitutionality, the implications of its policy are far reaching and dangerous. There has been only 1 day of hearings on S. 1423, and none since the bill was amended extensively in subcommittee. Our Federal judiciary deserves more from the Senate than precipitous action on this important matter. So in fact does the general public.

As Philip Kurland has reminded us:

> The provisions securing the independence of the judiciary were not created for the benefit of the judges, but for the benefit of the judged. It is not in the keeping of the judges to surrender this independence under pressure or voluntarily to give it away. Judicial independence is held in trust for the people. * * *

BIRCH BAYH.

ADDITIONAL VIEWS OF SENATOR CHARLES McC. MATHIAS, JR. ON S. 1423, AS AMENDED, THE JUDICIAL TENURE BILL

I concur generally in the additional views of Senator Bayh. I would add only the following two comments.

First, as Chief Justice Burger has reminded us:

> [i] the performance of assigned constitutional duties each branch of the Government must initially interpret the Constitution, and the interpretation of its powers by any branch is due great respect from the others. *United States* v. *Nixon*, 418 U.S. 683, 703 (1974).

In order to insure that respect, however, we must interpret. Our oath to uphold and defend the Constitution is every bit as binding upon us as it is upon the judges. When we consider legislation, therefore, that approaches the outer boundaries of constitutional power we must make judgments, we must engage in the kind of process that is required to reach a constitutional decision. We can only encourage the denigration of that respect we are owed by the courts by saying, in effect, "well, we don't know about the constitutionality of this, so let's pass it and let the courts decide." Before we pass S. 1423, let us look to our duty as initial interpreters of the Constitution.

Second, for me the almost determinative fact in this whole controversy is that the "alternative" to impeachment was discovered so late in the day. So far as I am aware, until Burke Shartel wrote in 1930 no one had suggested that the impeachment mode of removal was not the exclusive means. Certainly, the frustration of the Jeffersonians with impeachment as a device to remove Federalist judges and their failure to notice an available alternative that was within the "understanding" of the framers says volumes about the contemporaneous interpretation of the impeachment clause and its application to judges. I can only adopt the words of Justice Frankfurter in *Romero* v. *International Terminal Operating Co.*, 358 U.S. 354, 370–371 (1959), in rejecting the arguments of counsel that Congress in passing the 1875 act conferring Federal question jurisdiction on Federal courts had made maritime suits cognizable on the law side of Federal courts:

> Petitioner now asks us to hold that no student of the jurisdiction of the Federal courts or of admiralty, no judge, and none of the learned and alert members of the admiralty bar were able, for 75 years, to discern the drastic change now asserted to have been contrived in admiralty jurisdiction by the act of 1875. In light of such impressive testimony from the past the claim of a sudden discovery of a hidden latent meaning in an old technical phrase is surely suspect.

> The history of archeology is replete with the unearthing of riches buried for centuries. Our legal history does not, however, offer a single archeological discovery of new, revolutionary meaning in reading an old judiciary enactment. The presumption is powerful that such a far-reaching, dislocating construction as petitioner would now have us find in the act of 1875 was not uncovered by judges, lawyers or scholars for 75 years because it is not there.

Similarly, I think there is a powerful presumption that this alternative to impeachment of Federal judges, however persuasively it might be argued in the abstract, was not discovered in the Constitution by the Jeffersonians or any number of others frustrated with the inconvenience of removing Federal judges through impeachment nor was discovered by the thousands of eminent scholars of our Constitution prior to this recent time simply "because it is not there."

CHARLES MCC. MATHIAS, JR.

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Calendar No. 958

95TH CONGRESS
2d Session

SENATE

REPORT
No. 95-1036

INTERNATIONAL MARITIME SATELLITE TELECOMMUNICATIONS ACT

JULY 25 (legislative day, MAY 17), 1978.—Ordered to be printed

Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

[To accompany H.R. 11209]

The committee on Commerce, Science, and Transportation, to which was referred the bill (H.R. 11209) to provide for the establishment, ownership, operation, and governmental oversight, and regulation of international maritime satellite telecommunications services having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill as amended do pass.

PURPOSE AND SUMMARY

The purpose of this legislation is to provide for the U.S. participation in the International Maritime Satellite Organization (Inmarsat), or another international maritime satellite telecommunications organization established or empowered to develop and operate an international maritime satellite telecommunications system.

This bill (1) declares that it is the intent of the Congress that the United States participate through a private entity in Inmarsat or another organization designed to serve the maritime commercial and safety needs of the United States and foreign countries; (2) designates the Communications Satellite Corporation (Comsat) as the U.S. entity to provide maritime satellite communications; (3) authorizes Comsat to be the sole owner and operator of any satellite earth terminal stations in the United States; (4) requires Comsat to serve as a participating common carrier subject to the Communications Act of 1934 and connect its facilities with other domestic and international carriers, as authorized by the Federal Communications Commission (Commission); (5) authorizes the President to issue instructions to Comsat, as the U.S. representative to an international maritime

satellite organization, with regard to foreign policy, and allows the Secretary of Commerce to supervise Comsat with respect to the national interest; (6) authorizes the Commission to issue instructions to Comsat, as the U.S. representative to an international maritime satellite organization, with respect to regulatory matters; and (7) requires the Commission to conduct certain studies and to administer the bill.

Legislative History

S. 2211 was introduced on October 17, 1977, by Senators Hollings and Stevens by request. Hearings were held by the Communications Subcommittee of the Committee on Commerce, Science, and Transportation and on May 8, 1978, on that bill and on the staff working draft dated April 28, 1978. The full committee met on June 27, 1978, and ordered the staff working draft, with several modifications, to be substituted for the text of H.R. 11209, which had been referred to the committee on May 16, 1978. H.R. 11209, as amended, was then ordered reported.

The subcommittee received comprehensive testimony and written submissions from the Federal Communications Commission, National Telecommunications and Information Administration, American Radio Association, AFL–CIO; American Telephone & Telegraph Co.; Western Union International; ITT World Communications, Inc.; Comsat; Southern Pacific Communications Co.; RCA Global Communications, Inc.; Magnovox Government and Electronics Co.; and the American Institute of Merchant Shipping.

The Chairman of the Federal Communications Commission, Charles D. Ferris, expressed support for the designation of a corporate operating entity that neither owns nor is owned by any carrier which participates in the competitive pickup and delivery of maritime communications services within the United States. Assistant Secretary of Commerce Geller endorsed S. 2211, the administration bill, which would create a new private corporation, owned initially by certified common carriers, to participate as the sole U.S.-designated entity. Several witnesses representing domestic and international common carriers endorsed the designation of a new corporate entity owned by the carriers. A.T. & T. advocated designation of Comsat operating as a carriers' carrier, conditioned upon allowing the international record carriers to invest in the system, particularly the earth stations. Comsat supported its designation as the U.S. entity, including ownership of the space segment as well as the earth terminal stations. The representative of the ship radio officers and radio electronic officers pointed out the need to upgrade the high-frequency radio service available from public coast stations.

Background for Legislation

Existing maritime communications, both telephone and telegraph, normally are transmitted by high-frequency (HF) radio via public coast stations. These communications, particularly the high-frequency radio service used for long-range global communications, are often slow, unreliable, and of poor quality.

Satellites are now being used to improve maritime communications. The Marisat system, originally developed by the Comsat General Corporation for the U.S. Navy, is now providing rapid, efficient, and reliable service 24 hours per day. Since the Navy did not require the full capacity of the satellities for its own purposes, Comsat General designed a system that would meet the needs of commercial maritime service as well. Approximately 75 percent of the system is allocated to the Navy services.

Under a joint-venture arrangement. Comsat General and three U.S. international carriers share in the ownership of the Marisat system which was developed at an estimated cost of $100 million. The system includes three synchronous satellites with global coverage, two earth stations, and control and monitoring facilities. Comsat General has an 86.29 percent ownership interest and serves as the system manager, RCA Global Communciations has 8 percent, Western Union International has 3.1 percent, and ITT World Communications has 2.3 percent. Each of the four carriers shares the Navy revenue in proportion to its ownership interest in the system, and independently markets its proportionate share of the commercial capacity of the system.

Marisat provides voice communications, telex service, document facsimile, and data service. Today, the HF radio services are less expensive. However, many of the services offered by Marisat are not provided by HF radio. Marisat is serving the diverse need of tankers, passenger ships, oil drilling platforms, seismic survey ships, and ice-breakers with improved quality.

The commercial fleets of other nations have availed themselves of the services of Marisat, including Belgium, Canada, Denmark, Italy, Japan, Liberia, Norway, Panama, Sweden, and the United Kingdom.

INMARSAT

In 1972, after preliminary discussions on the advisability of a global maritime satellite system which would include all seafaring nations in a single cooperative and cost sharing entity, the Intergovernmental Maritime Consultative Organization (IMCO), an agency of the United Nations, established a panel of experts to examine the characteristics and operational requirements of such a system.

The United States participated in lengthy discussions of system ownership and operation and made it clear that the United States could become a member of Inmarsat only under an arrangement involving two agreements and providing for private ownership of the U.S. share of the system. A convention for signature by governments and an operative agreement to be signed by either government or their designated entities, were opened for signature on September 3, 1976.

The convention creates a policymaking assembly of the full membership of Inmarsat, with each nation having one vote. A 22-member council representing the major investors will have the responsibility of providing the Inmarsat space segment, setting standards for earth terminal stations and ship terminals and making other decisions necessary to achieve the purposes of the Organization. A directorate, headed by the Director General, will implement the council's decisions.

Initial investment in Inmarsat was based on anticipated utilization of the space segment. After the system becomes operational, investment will be based on actual use. Voting on the council will be weighted according to ownership.

The five major initial investors will be the United States, 17 percent; United Kingdom, 12 percent; Union of Soviet Socialist Republics, 11 percent; Norway, 9.5 percent, and Japan, 8.45 percent.

The other 35 nations which will make initial investments in Inmarsat under the operating agreement are: Italy, France, West Germany, Greece, the Netherlands, Canada, Spain, Sweden, Denmark, Australia, India, Brazil, Poland, Argentina, Belgium, Finland, East Germany, Singapore, New Zealand, Bulgaria, Cuba, Indonesia, Iran, Chile, Peru, Switzerland, Liberia, Algeria, Egypt, Ghana, Iraq, Kuwait, Thailand, Turkey, and Cameroon.

The Inmarsat Convention must be signed by July 5, 1979, by nations representing 95 percent of the investment shares in Inmarsat. If this does not occur, the convention becomes null and void. Testimony from NTIA stressed that Congress must act this session in order to meet that deadline.

Meanwhile, a U.S. preparatory committee, including representatives from the Department of State, NTIA, FCC, and the carriers, is meeting with representatives of other nations to develop recommendations for implementation of the convention when it is ratified.

Need for Legislation

The Marisat system presently providing maritime satellite communications service to the Navy and more than 100 civilian ships, was authorized as a developmental program for a period of 5 years, ending in 1981. The primary purpose of the Marisat commercial service has been to demonstrate the feasibility of offering maritime satellite service to commercial shipping.

Now, as Chairman Ferris stated at the subcommittee hearing:

> The principal question regarding maritime telecommunications is how to assure the continued availability of maritime satellite communications services beyond the design life of Marisat. (T. 7.)

There are several alternatives for the provision of maritime satellite telecommunications services. Among these are the services that will be available from the International Maritime Satellite Organization (Inmarsat). The Congress should decide whether it is in the U.S. interest to participate in Inmarsat or some other joint venture and if so, which organizational structure and operating arrangement would best serve the public interest.

In 1962, the Congress passed the Communications Satellite Act (Public Law 87–624) which created the Communications Satellite Corporation (Comsat) and gave it the responsibility to foster the establishment of a global commercial communications satellite system in cooperation with other countries as quickly as practical. That system was established and is known as the Intelsat system. The International Telecommunications Satellite Organization (Intelsat) has 102 member countries, including the United States. Comsat is the U.S. signatory to the operating agreement of Intelsat. As the U.S.

designated entity, Comsat provides satellite services to U.S. communications common carriers serving the public between the United States and foreign points. While the 1962 act authorizes Comsat's participation in a global communications sytem, it does not authorize participation in other international systems or organizations providing telecommunications services.

The Inmarsat Convention, the product of lengthy negotiations in which the United States actively participated, presents the Congress with a delimma. Although Congress did not decide prior to the negotiations that it is in the national interest to participate in Inmarsat, as it did with the establishment of Intelsat, it is apparent to the committee that if the United States is to have any credibility in future international telecommunications negotiations, the Congress must authorize the U.S. participation in Inmarsat and designate a representative to sign the operating agreement.

The Committee recognizes the possibility that the Inmarsat Convention might not come into force even with our participation. Nevertheless, the hearing record confirms the need for a U.S. commitment to international maritime satellite communications. In response to a question from the subcommittee chairman, Senator Hollings, as to whether the United States "would be in an international fix * * * if we did not go forward with Inmarsat," Assistant Secretary Geller replied:

> * * * it would not sit well with the international community, having urged so strongly Inmarsat on the conditions we set forth, and having gotten those conditions after a big fight, to turn around and not go forward. It would not put us in the best position in the international community * * * (T. 56–57).

The committee believes that the Congress must move expeditiously to designate a representative authorized to sign the Inmarsat operating agreement and enable us to become a party to the Inmarsat Convention prior to July 5, 1979.

DESIGNATED ENTITY

The committee considered whether a consortium of existing U.S. carriers, a single corporation owned by the carriers, or Comsat, would best serve the public interest as our designated entity.

Within the context of an international organization which will require legal and financial responsibility, the committee believes the consortium would be undesirable. A single management structure is needed to represent U.S. interests effectively and thus a single corporation is necessary.

During subcommittee hearings on the appropriate corporate structure, the international record carriers (IRC's) argued that because of their past efforts to serve the maritime communications market, they should be given the opportunity to form a corporation that would be our designated entity. They further argued that designation of Comsat would extend Comsat's monopoly in international communications, thus depriving the IRC's of the ability to offer new and innovative services to their customers which could force them out of the maritime communications business.

The committee gave serious consideration to these arguments. The creation or extension of a monopoly to any new telecommunications facilities should only be undertaken after thorough consideration of the consequences of such action for the public interest.

A key factor during committee consideration was that international maritime satellite facilities, because of the very high startup and operating costs and a potentially limited maritime market, will be provided by a single, intergrated system, with little or no chance for duplicative competitive systems to exist. The U.S. operating entity participating in that system will be the sole supplier of U.S. segment capacity obtained from the system. This function will be a monopoly activity, whether the entity is Comsat or a multi-carrier-owned corporation and will be the subject of appropriate regulatory scrutiny. As FCC Chairman Ferris stated:

> The fundamental public policy issue, therefore, is how to insure that the integrated satellite system is operated effectively and efficiently, while simultaneous preserving the present competitive environment for the pickup and delivery of maritime and other communications services. (T. 11.)

Chairman Ferris went on to warn:

> If a group of competing carriers were allowed to own and control the satellite entity, these carriers might collude to divide the market and might discriminate against non-owners. Even if ownership were offered to all interconnecting carriers, a potential for arbitrary market segmentation or joint marketing would remain.
>
> Cooperation in owning and operating the satellite segment might extend to rates and services offered the public, and choice and innovation in the marketplace for maritime services might be significantly lessened. (T. 11.)

Chairman Ferris concluded:

> It therefore may be desirable to designate an operating entity which neither owns nor is owned by any carrier which participates in the competitive pickup and delivery of the maritime communications services within the United States. (T. 12.)

Because the operating entity, whether it is a multi-carrier-owned corporation of Comsat, will be the sole supplier of the U.S. segment, it will be a monopoly. The rates authorized by the Commission will be based on costs determined by the entity's investment plus a fair rate of return that will also be set by the Commission. Hence, rates charged to users will be the same regardless of who owns the entity.

The carriers' arguments for creation of a corporation owned by the participants in Marisat fail to describe the proposed decisionmaking process of such a corporation. In the committee's judgment, the complications resulting from the disparate process likely to arise would be a major hindrance to the effective and efficient participation in Inmarsat by a multi-carrier-owned corporation. Assistant Secretary

Geller's statement expressing support for the designation of a corporation also fails to address this problem:

> Under S. 2211, the details of the intercorporate and other relationships between the entity and its constituent owners are left to the Federal Communications Commission. It is our belief that such matters are best left to the expertise of the regulatory agency operating within the broad policy framework of permitting all eligible carriers and, after 5 years, noncarriers to participate in ownership. (T. 50.)

The experience of the FCC with the establishment of Marisat clearly indicates the many problems that the Corporation and its owners would be incapable of resolving without extensive Commission involvement. The Commission would be required to make business decisions that are inappropriate for the regulatory process. For example, with Marisat the Commission had to determine not only the basic eligibility requirements for carrier participation, but also questions relating to ownership, operation, and management of the satellite system.

The Commission was forced, through a prolonged process, to consider numerous pleadings and responses by each of the participants. The Commission issued a decision on August 30, 1973, requiring the joint-venture participants to enter into a consortium agreement and to submit it to the Commission for review. That agreement was not submitted until August 15, 1975, and a wide variety of issues remained unresolved. These issues were described in detail by Chairman Ferris as:

> (1) [The] decisionmaking processes within the joint venture; and (2) the manner in which satellite capacity would be allocated. The first area included the issue of whether the IRC's, as minority owners, should be given voting or decisionmaking power within the joint venture greater than their investments or in the alternative, a veto power on major matters. The second included the issues of whether satellite capacity should be allocated in proportion to investment on a preassigned discrete channel basis or provided on a demand assignment basis without regard to investment. The Commission released an initial decision addressing these issues and later reviewed that decision upon reconsideration and clarification.
>
> In addition, the Commission was later required to consider questions involving whether (1) minority participants should have to contribute capital or operating expenses for telephone switching equipment; (2) Marisat's transportable earth station or other test equipment should be made available to each participant in proportion to its investment share; (3) the joint-venture agreement should expressly provide for adjustment of ownership shares if Marisat continues to operate beyond its expected design life; (4) a participant should have access to shipboard terminals provided by another carrier; and (5) RCA should be permitted to operate its own earth station.

The IRC's did not make their initial capital contributions for Marisat until February 2, 1976, just a few weeks before the satellite launch date.

Although the Commission might not face the same regulatory issues in an Inmarsat joint venture, given the Marisat experience, there is certainly a strong possibility that the IRC's would not be able to reach agreement on fundamental issues affecting the Inmarsat Corporation. The Commission would then become embroiled in matters beyond its authorized expertise. The question is whether the potential benefits to the customer are sufficient to warrant the detailed Commission regulation of the Corporation which would likely be required.

This question is particularly important in view of the efforts being made by the Congress and the exective branch to limit the extent of Federal regulation. It is the Committee's conclusion that the potential benefits do not outweigh the burden of extensive regulation.

In view of the foregoing, the committee believes that designation of Comsat to represent the United States in Inmarsat will serve the public interest. As the U.S. representative in Intelsat as well, Comsat will be in a better position to minimize overhead costs than a multi-carrier-owned corporation. Together with its experience in international satellite communications, Comast will have a greater opportunity to make the provision of maritime satellite communications an economically viable service.

By designating Comsat to represent the United States in providing international maritime satellite communications, the committee does not intend to authorize Comsat to provide other international communications services not contemplated by this bill. If other international telecommunications services become feasible in the future, the committee will examine the provision of those services on the information then available. Action taken by the committee in this instance would not necessarily be a precedent for management of future international telecommunications systems.

PARTICIPATING CARRIER

Comsat, operating as the U.S.-designated entity, will be the sole supplier of U.S. space segment capacity obtained from Inmarsat. However, the customer located on land will have to be connected to the earth station facility by an authorized user in order to communicate with ships at sea and other marine locations as authorized by Inmarsat. The committee considered two arrangements for making the satellite system available to tariffing domestic customers.

(*a*) *Carrier's carrier.*—Under this arrangement, the U.S. entity would provide satellite transmission capacity to our common carriers authorized to obtain such capacity and use it, together with other facilities, to provide an end-to-end service to the customer. The entity, as a carrier's carrier, would file tariff schedules with the Commission showing the rates charged to the carriers. The carriers would file tariffs showing the rates paid by their customers for total, end-to-end service. These tariffs would incorporate the rates they paid to the carrier's carrier for the satellite segment capacity.

Comsat presently operates as a carrier's carrier in Intelsat. The IRC's and A.T. & T. lease circuits from Comsat and, in cooperation

with their foreign correspondents, which are normally the Government telecommunications agencies, they provide end-to-end telecommunications service.

(*b*) *Participating carrier.*—As a participating carrier, the U.S. entity's function would be to receive and assemble maritime satellite traffic at the earth stations and route outbound traffic over the satellite system to ship and other marine stations and inbound traffic to the appropriate carrier for terrestial pickup and delivery to onshore points. In this case, the entity would not be limited to providing transmission capacity to authorized carriers, but would retain responsibility to the public for the satellite services. However, in order for the customer to gain access to the satellite system, existing and future domestic and international carriers would be authorized to connect their system to the satellite system at the earth stations. The entity would file tariffs with the Commission reflecting the rates to the public for use of the total satellite system portion of the maritime satellite services, i.e., earth station to marine station and vice versa. The domestic and international carriers would provide customer access to the satellite system by interconnecting their onshore networks to the entity's earth station facilities, and they would file tariffs showing the rates to customers for this service. Thus, the entity and the domestic and international carriers would participate in providing a through service to the customer.

Shipboard equipment would not be a common carrier activity and would continue to be offered as described by Chairman Ferris: "* * * competitively independent of the other aspects of the maritime communications service." (T. 11.)

The Chief of the FCC Common Carrier Bureau, Walter Hinchman, summarized this arrangement:

> * * * the distinction is best made in terms of the way most of telecommunications industry operates today, and it operates on a participating carrier basis, where the carrier has responsibility, ownership, and operating responsibility for those facilities within its geographic area of service. This is the way the Bell System interconnects with the independent telephone industry. It is the way the U.S. carriers interconnect with their overseas correspondents, as well as the way the international carriers connect with the domestic carriers in the United States. (T. 23.)

The committee believes that the participating carrier has significant advantages over a carrier's carrier arrangement in the areas of (1) investment and operating costs and administrative expenses; and (2) terrestrial access to the satellite system.

First, those carriers authorized under a carrier's carrier arrangement to provide end-to-end maritime satellite services would be acting as "middlemen." They would incur administrative expenses in leasing transmission capacity from the entity, such as personnel, record-keeping, and other overhead expenses customary for any business activity. Second, those carriers would also incur investment costs and maintenance expenses for test equipment and other facilities necessary to undertake overall operational responsibility for end-to-end maritime satellite service. Those functions would duplicate many of the func-

tions performed by the U.S. entity and would result in what Chairman Ferris describes as a "layering," that is, more than one carrier being responsible for the same service offering.

The participating carrier arrangement eliminates "layering" and, as a result, permits the customer significant economies in this portion of its maritime service needs. As a participating carrier, the U.S. entity would be directly responsible to the customer for satellite service and rates. As a result, the entity would be more likely to pursue cost-cutting measures than if it were able to pass on costs to other carriers under a carrier's mode of operation.

Further, there would be a more competitive environment in the provision of terrestrial access to the satellite system, since the U.S. entity would be free to interconnect with any domestic or international carrier. This would provide the customer an opportunity to select the least expensive means of gaining access to the satellite system. The carrier's carrier arrangement could raise questions of whether Western Union and specialized and data carriers would be authorized to have access to the satellite system under section 222 of the Communications Act.

Because the U.S. entity will have to depend on revenues received for use of the space segment and earth station, it can be expected to maximize the use of these services. Therefore, the entity can be expected to permit customers the maximum opportunity to seek the least expensive terrestrial arrangement among competitive suppliers of landline access to the satellite system. The entity can also be expected to actively promote maritime satellite services with prospective customers.

The participating carrier arrangement does not mean the entity would compete with domestic and international carriers to provide terrestrial access to the satellite system. The entity could promote maritime services to U.S. customers, but the customer's terrestrial access to the earth stations would have to be arranged through a domestic or international carrier and could not be supplied directly by the entity. The customer would not be precluded, under the participating-carrier arrangement, from leasing private line services from any of the authorized carriers, directly from its place of business to the earth stations. In other words this arrangement does not modify directly or indirectly the authorized user decision.

As Chairman Ferris indicated in answer to a subcommittee question:

> * * * the U.S. operating entity would be more accountable to the ultimate consumer and more conscious of the need to minimize costs and rates under a participating carrier arrangement. Moreover, there would be no unnecessary layering of administrative and operating costs as would likely result under a carrier's carrier arrangement.

In the committee's judgment, the participating carrier alternative is the more appropriate arrangement for providing interconnection with domestic and international carriers.

SHIPBOARD TERMINAL EQUIPMENT

Unlike onshore point-to-point international telecommunications by satellite, which are provided through fixed earth terminal stations,

maritime satellite telecommunications require many separate small receivers and transmitters aboard ships at sea and aboard other marine stations, such as fixed or mobile exploration drilling rigs at sea. This shipboard terminal equipment must be small and inexpensive as compared with the earth terminal stations used in onshore point-to-point telecommunications, and must be compatible with the maritime satellite system.

Shipboard communications equipment, which has traditionally been considered part of a ship's own complement of equipment, is usually provided by a variety of competing international equipment suppliers. However, when the Marisat program began, shipboard terminal equipment compatible with the Marisat satellite did not exist. In order to "seed" the market for new maritime satellite telecommunications services as quickly as possible, Comsat General acquired about 200 shipboard terminal units for sale or lease to ship operators.

Subsequently, other companies have developed and sold shipboard terminal equipment which can be used with the Marisat satellite. The committee understands that a number of other U.S. firms and foreign companies are interested in entering the market.

The committee is persuaded that the growth of maritime satellite telecommunications will be greatly accelerated if a competitive marketplace can be maintained for shipboard terminal equipment. Competing maritime suppliers can be expected to promote the new equipment services more effectively. As Chairman Ferris testified before the committee, "It is important to maintain the present practice of providing shipboard terminal equipment competitively independent of the other aspects of the maritime communications service." Accordingly, "any operating arrangement which impairs competition in the provision of shipboard terminal equipment should not be established It is the intention of the committee to encourage a competitive marketplace for shipboard terminal equipment, separate and apart from the telecommunications services themselves.

EARTH STATION OWNERSHIP

This bill authorizes Comsat to be the sole owner of the earth station. The committee believes the maritime satellite system would operate most efficiently as a single, integrated system. As such, Comsat should have the sole ownership and control of not only the U.S. portion of the space segment, but also of the earth stations as well. This is of particular importance because of the committee's choice of the participating carrier arrangement, which provides for interconnection at the earth station with the terrestrial networks of domestic and international carriers, and which makes Comsat responsible to the public for the effective operation of the Inmarsat system.

The carriers argued that they should be allowed an ownership interest in the earth stations. However, it is generally recognized that there will be only a small number of earth stations in the foreseeable future with no economic opportunity for multiple, competing stations. Hence, there can be no meaningful competition between the stations; there can be only joint ownership of the limited number of

stations. Such a situation does not present a choice between competition and monopoly but rather the choice of which monopoly should be permitted to own the earth stations. The committee believes that the multiple ownership advocated by the carriers would detract from the efficiency of the system without compensating benefit to the customer. There is a real possibility that multiple ownership would be more costly and would pose added regulatory burdens for the Commission since the danger of market sharing would exist for as long as there were a limited number of earth stations. The Commission has identified a number of questions [1] raised by multiple ownership and while, clearly, the questions are answerable, it would mean extensive regulatory proceedings, possible litigation, the cost of which would be borne by customers and taxpayers. Further resolution would involve the Commission in business decisions. As indicated earlier, this would be contrary to public policy efforts to rationalize and reduce Government regulation.

The bill does permit any agency of the Government to own or operate an earth station for the exclusive purposes of training personnel in the use of equipment associated with the operation and maintenance of such facility or carrying out experimentation which relates to maritime satellite telecommunications services. Such an agency must be authorized to operate by the responsible executive department and in all cases the facility must be authorized by the Commission.

Any other person may be authorized to own or operate an earth station for training personnel in the use of equipment necessary to operate and maintain earth stations to carry out experiments relating to maritime satellite communications. This provision is intended to assist in training radio and electronic officers for their shipboard responsibilities.

SCOPE OF SERVICE

A question was raised during the subcommittee hearing concerning whether the maritime communications services to be offered by Inmarsat would be available only to ships, vessels, and floating craft and platforms, not permanently moored in the marine environment. Particularily, the concern was expressed in the question of whether a

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[1] The Commission questions are:

(a) Would all the existing domestic and international carriers authorized to connect with the maritime satellite system be eligible for ownership in U.S. earth stations? Would the Western Union Telegraph Co. (WU), which provides the basic domestic Telex and TWX networks which will be used to access the maritime satellite system, be eligible to own a share of U.S. land stations? Or, would WU be barred from ownership of such international facilities by section 222 of the Communications Act?

(b) Would only carriers which actually connect their facilities directly with U.S. maritime satellite earth stations be eligible for ownership, or would remotely located "connecting" carriers (e.g., an independent telephone operating company or the Hawaiian Telephone Co.) be eligible for ownership? Would only carriers be eligible for ownership, or could users be also considered?

(c) Would it be practical to have a large number of owners of only a few maritime satellite earth stations, whether such owners are carriers, users, individuals, or a combination?

(d) What standards would determine ownership eligibility and on what basis would ownership shares be determined? Would ownership shares of carriers be related to the level of traffic provided to the maritime satellite system? Would ownership shares be adjusted to reflect changes in traffic provided to the system? Would a minimum or maximum level of investment be required?

(e) Would ownership in maritime satellite earth stations result in a measure of operational control to the various owners? If so, how would that control be exercised?

(f) Would all owners of U.S. maritime satellite earth stations be joint licensees of those stations and subject to the provisions of the Communications Act? If not, through what procedures would the Commission effectively regulate the operation, control, and ownership of the earth stations?

(g) If eligible carriers chose not to own shares in maritime satellite earth stations, would other eligible carriers be required to pick up the outstanding shares, or would the U.S. entity be required to assume any ownership not assumed by other eligible carriers? (Q. 11.)

permanent oil production platform located in the marine environment would have access to the Inmarsat system.

Chairman Ferris answered this as follows:

> Therefore, it is clear that primary access to the space segment from the marine environment is intended to be by ships, but that satellite communications services may be provided to other users in the marine environment, such as oil drilling platforms. While provision of such services is to be determined by the Inmarsat Council on a case-by-case basis, the only probable impediment to availability appears to be a question of space segment capacity for this purpose at any given time vis-a-vis capacity for use by ships. (Q. 3.)

The possible provision of Inmarsat communications services to production platforms is not intended to supplant the existing means of communications, including high-frequency radio, offshore telephone cable and microwave, private microwave, domestic satellite, or a combination of those communication services. Provision of such service by Inmarsat would be an alternative available to oil platforms in competition with existing communication methods. The user will be able to select which method is most suitable for it, taking into account such factors as cost, availability of dedicated channels, reliability, and the types of service provided.

EXECUTIVE BRANCH AUTHORITY

Under this bill, the Secretary of Commerce is directed to (1) exercise such supervision over the Corporation's activities as needed to insure consistency with the national interests of the United States; (2) coordinate the activities of governmental agencies (other than the FCC) with responsibilities in the field of telecommunications; (3) insure the availability and utilization for general Government purposes of the maritime telecommunications services provided pursuant to this bill (although the Government is not bound to utilize those services where a separate telecommunications system may be required to meet unique governmental needs or is otherwise required in the national interest); and (4) seek to insure (A) coordinated and efficient use of the electromagnetic spectrum and orbital space and (B) technical compatibility of the space segment with existing communications facilities in the United States and in foreign nations. The President is authorized to issue instructions to the Corporation in connection with the Corporation's relationships and activities with foreign governments and international entities and other organizations (including the maritime satellite organization which the United States joins) as may be necessary to insure that such relationships and activities are consistent with the foreign policy of the United States.

In addition this bill would improve the coordination of international maritime satellite policy by providing the Secretary of Commerce with the authority to supervise matters that relate to the national interest and to coordinate governmental activities consistent with the responsibilities assigned to the Secretary by Executive Order 12046, issued on March 27, 1978. The committee expects that the authority of the Secretary to exempt Government agencies from utilizing Inmarsat

services will extend only to the military services and then only after they have clearly demonstrated that it is necessary to national security.

The President is provided authority to issue instructions on matters relating to U.S. foreign policy. With the specific authority provided to the President and the Secretary of Commerce, the committee expects the executive branch to improve its development and implementation of international telecommunications policy by improving coordination between executive branch agencies and the FCC, the carriers, and users.

Although the United States is the leading user of communications channels and information in the world, the administration has neither formulated a comprehensive policy regarding the various communications and information issues that have entered international discussions, nor has the administration established an effective mechanism by which to develop and coordinate U.S. policy on these issues. With the concurrence of this committee and the Foreign Relations Committee, section 402 of the State Department authorization bill provides that the President shall establish procedures for the development and maintenance of a comprehensive international communications and information policy by October 1, 1978, and on that date the President shall transmit a report thereon to these committees.

The changes in the instructional process contained in this bill are intended to assist the President in this area but, clearly, they will not resolve all the problems that presently exist in the development and implementation of U.S. international telecommunications policy. Hence, the committee intends to continue to monitor activities in this regard, looks forward to the October 1978, report, and will address specific activities as necessary.

FCC AUTHORITY

This bill gives the Commission authority to: (1) insure interconnection of the earth stations with domestic and international common carriers; (2) make recommendations to the President to assist the President in supervising Comsat; (3) grant authorizations for (*a*) space segment channels obtained by Comsat from Inmarsat and (*b*) construction and operation of earth stations; (4) continually review Comsat's activities as the U.S. signatory; (5) prescribe any rules necessary to carry out the act; and (6) instruct Comsat with respect to regulatory matters within the Commission's jurisdiction.

In construing the Commission's authority over Comsat in regulatory matters, the 1962 Communications Satellite Act which makes the provisions of the 1934 Communications Act applicable to Comsat, the 1934 Communications Act should be read as a whole.

Since Comsat will be the U.S. representative in the Inmarsat Council, regulatory decisions should have a direct impact on Comsat's actions within the Council. Therefore, the Commission will have the authority to issue instructions to Comsat on such regulatory matters.

The committee expects that the Commission will use its expanded authority to issue instructions to Comsat in regulatory matters to alleviate problems experienced in past Intelsat negotiations. Sometimes Comsat votes without any instructions, while at other times, it has voted before the Commission has performed its regulatory func-

tions. The committee expects that Comsat will not vote in the Inmarsat Council until a determination has been made by the Commission regarding the matter at issue. This expectation, of course, is dependent upon the fact that Comsat will file with the Commission on a timely basis and the presumption that the Commission will act in an expeditious manner so as not to delay Comsat's exercise of its responsibilities as a member of Inmarsat.

STUDIES

This bill authorizes three studies which the committee believes are of great importance.

1. Study of Comsat's structure and activities.—Comsat was created by the Communications Act of 1962 to foster the establishment of a global satellite system and represent the United States in the operation aspects of that system. Comsat is therefore the U.S. signatory to the operating agreement of Intelsat. This Act authorizes Comsat to be the United States designated entity in Inmarsat or another international organization for the provision of maritime service via satellite. Comsat General, a wholly-owned subsidiary of Comsat, is engaged in a number of activities. It now provides domestic maritime satellite service through Marisat and it has contracted for the provision of 200 shipboard satellite terminals which was not part of this common carrier communications service. Comsat General advises the Arab Satellite Communications Organization in connection with the establishment of an Arab regional satellite system, provides 14 countries with technical services encompassing management and engineering activities, and holds ownership of minority interests in companies operating earth stations in Nicaragua and Panama.

Comsat General is also providing all-digital domestic satellite service through a new corporation, Satellite Business Systems, which is a joint venture with the IBM Corp. and Aetna Life & Casualty. In that capacity, Comsat General is competing with other companies offering domestic satellite service. Comsat General participates with the U.S. Geological Survey and Telsat Canada in a program to demonstrate the capacity of satellites and small, unattended earth stations for the collection of water resource monitoring data from remote areas of the United States and Canada. It was engaged with the European Space Agency and the Government of Canada in considering an aeronautical satellite program in which Comsat General's share of the setellite capacity was to be used by the Federal Aviation Administration (FAA). However, Congress limited FAA fiscal year 1978 funds for this program, and it has not been established.

The committee believes sound public policy requires a review of the corporate structure of Comsat and a study of its activities. Specifically, the Commission shall conduct a study for the following purposes: (1) to determine whether activities in which Comsat or any subsidiary of Comsat is now engaged or may become engaged are consistent with its statutory obligations under this act and the 1962 act (2) to determine that existing regulatory and other safeguards are sufficient or to recommend additional safeguards in order to protect the public interest should any occasion arise in the future where Comsat's dual statutory roles present a potential conflict of interest; (3) to review

the existing corporate structure of Comsat and recommend any changes that may be necessary to insure that Comsat is organized effectively to best carry out its statutory obligations.

If the Commission finds, as a result of this study, tlat legislative proposals are necessary, they should be included in the report to the Congress.

2. Study of public maritime coast station services.—Substantial questions have been raised about the present status of high-frequency radio telephony and telegraphy public coast stations and their probable future if maritime satellite service is implemented worldwide.

The Commission has studied telegraphy public coast station operations in its docket No. 19544. Its current docket No. 78–67 was instituted to prescribe measures for improvement of maritime mobile communications services rendered by public coast radiotelegraph stations, including inter-connection and upgrading of the station facilities. The committee expects the Commission to expeditiously conclude this proceeding, giving careful consideration to the objective of providing effective and efficient communication service to those ships requiring high-frequency radio service from public coast stations now and in the future.

Because of the potential economic impact of maritime satellite services on traditional public coast station operations, the committee requests the Commission to undertake a broader study than that being conducted in docket No. 78–67. This broader study should determine the probable short-term and long-term effects of the provision of maritime satellite services on traditional radio telegraphy and telephony public coast station operations, and it should determine if special measures are required to ensure efficient and cost-effective service for that part of the maritime community which may not be in a position to utilize the satellite system. The study should include any legislative recommendations necessary to continue high-frequency services as needed.

3. *Study of navigation aids and safety assistance.*—Although there has been 6 years of preparatory work for Inmarsat, there is considerable confusion about its prospects for providing navigation aids and safety assistance. Assistant Secretary Geller confirmed this fact in answer to a subcommittee question:

> It is by no means clear at this point, however, as to what safety and navigation services will be provided through the Inmarsat space segment. (Q. 1.)

Chairman Ferris described the official U.S. Government position:

> * * * all the stated and justified maritime safety requirements are presently provided for by existing terrestrial based, Government-operated navigation facilities (Loran C and Omega), and that if future requirements, which depend upon a satellite, are identified and justified, then shared use of a separate multiuser satellite system should be more cost effective than integrating a positioning capability on the communications system platform. (Q. 1.)

However, a recent General Accounting Office (GAO) report issued March 21, 1978, identified 13 navigation systems. After analyzing these systems, GAO recommended establishment of a Government-

wide navigation plan under a single manager to reduce the proliferation and overlap of navigation systems. The Senate indicated its concern with the development of adequate navigation assistance in S. 682, the Tanker and Vessel Safety Act of 1977, passed by the Senate last year, which requires tankers to carry electronic navigational equipment.

This bill includes a provision requiring the President, in conjunction with appropriate executive branch agencies and the Commission, to conduct a study of Government provision of radio navigation aids and to report back to the committee within 12 months.

The committee is aware of an interagency group composed of representatives of executive branch agencies with Cochairmen from NTIA and OMB, recently created at the direction of the President, to study how to reduce the number of radio navigation aids operated by the Government. The results of this interagency study should be helpful in developing a Government-wide radio navigation plan. This plan should include a thorough consideration of future radio navigation needs, the specific procedures for achieving it, and a schedule for implementation. In addition to substantial direct monetary savings, a coordinated radio navigational system will make it possible to utilize the electromagnetic spectrum more efficiently and will save manpower costs.

It is expected that all affected agencies and users will be involved in this study. Rather than continuing to try to "piggyback" commercial needs into military requirements, serious consideration should be given to encouraging agreement by the Inmarsat Council to meet commercial maritime navigation and safety needs through the Inmarsat space segment. A study done under contract for the Maritime Administration entitled, "Inmarsat Radio Determination Economic Assessment," dated March 1978, indicates navigation service would be profitable and therefore should be attractive to Inmarsat.

It must be emphasized that this is a matter of great concern to the committee, and one that for too long it has been the battleground of Government agencies seeking to insure the continuance of their own "systems" to the detriment of our commercial maritime and aviation industries. The committee expects the President to resolve interagency disputes and submit a rational radio navigation plan to the Congress forthwith.

Estimated Costs

The Congressional Budget Office has submitted to the committee its estimate on this bill pursuant to section 403 of the Congressional Budget Act of 1974. The CBO submission is as follows:

Congressional Budget Office,
U.S. Congress,
Washington, D.C., June 29, 1978.

Hon. Howard W. Cannon,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Dirksen Senate Office Building, Washington, D.C.

Dear Mr. Chairman: Pursuant to section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed

H.R. 11209, the International Maritime Satellite Telecommunications Act, as ordered reported by the Senate Committee on Commerce, Science, and Transportation, June 27, 1978.

Based on this review, it is estimated that the studies mandated in the bill to be performed by the Federal Communications Commission will cost approximately $350,000 in fiscal year 1979, and the study to be performed by the National Telecommunication and Information Administration will cost approximately $500,000 in fiscal year 1979.

Should the committee so desire, we would be pleased to provide further details on this cost estimate.

Sincerely,

ALICE M. RIVLIN, *Director.*

REGULATORY IMPACT STATEMENT

H.R. 11209, as reported, provides the Federal Government with additional regulatory authority over Comsat in its new role as the sole U.S. designated entity in the Inmarsat organization or another international maritime satellite telecommunications organization.

The Secretary of Commerce is required to exercise such supervision over Comsat as may be necessary to ensure that its activities are consistent with the national interest of the United States. The President is authorized to issue instructions to Comsat in connection with the Comsat's relationships and activities with foreign governments and international organizations, including the Inmarsat, organization to ensure that Comsat's relationships and activities are consistent with the foreign policy of the United States. The Federal Communications Commission is required to institute the necessary administrative proceedings to implement ownership of the satellite Earth stations by Comsat and the operational arrangements under which Comsat shall interconnect the Earth station with U.S. domestic common carriers and international common carriers.

In addition, the Commission is authorized to instruct Comsat with respect to regulatory matters within the Commission's jurisdiction and is given general rulemaking authority to carry out the bill's provisions.

Because Comsat and the domestic and international common carriers are already regulated by the Commission, and because the additional regulation authorized by the bill relates only to their respective roles in providing international maritime satellite telecommunications service, the Committee anticipates minimal economic impact on Comsat. The bill does not increase Federal regulatory authority over any other entities or individuals.

The bill requires two studies and reports by the Commission and one by the President. The Commission is ordered to study Comsat's corporate structure and operating activities to determine whether any changes are required to ensure its ability to fulfill its obligations and carry out its functions under this bill, the Communications Act of 1934, and the Communications Satellite Act of 1962. The Commission must report its findings to the Congress within 12 months.

The Commission must also study public maritime coast station services and report to the Congress within 18 months.

The President, in conjunction with appropriate Government agencies, must conduct a study of all Government radio navigation systems to determine the most effective manner of reducing the proliferation and overlap of such systems. A report must be transmitted to the Congress within 12 months.

The completion of these studies and reports will require some additional paperwork by the agencies involved. However, the committee cannot estimate with any specificity the amount of additional paperwork or the monetary or manpower expenditures that will be required.

The committee has no reason to believe that the bill will have any impact on the privacy of any individuals or businesses.

Section-by-Section Analysis

SECTION 1. SHORT TITLE

The first section provides that this legislation may be cited as the "International Maritime Satellite Telecommunications Act".

SECTION 2. DECLARATION OF POLICY AND PURPOSE

Section 2 of the bill as reported adds a new title VII to the Communications Act of 1934, as amended (47 U.S.C. 151 et seq.), entitled "International Maritime Satellite Telecommunications".

Subsection (a) of section 701 of new title VII sets forth the congressional policy of the bill, to provide for the participation of the United States in an international maritime telecommunications satellite system. This subsection provides for U.S. participation in either the International Maritime Satellite Organization (Inmarsat) or another organization which develops and operates a global maritime satellite telecommunications system. This system is to serve the maritime commercial and safety needs of both the United States and other countries.

Subsection (b) of section 701 of new title VII sets forth the congressional purpose of the bill, to provide for U.S. participation in Inmarsat or such similar organization through the Communications Satellite Corporation (Comsat).

Definitions

Section 702 of new title VII sets forth definitions of six terms used in this title.

Designated operating entity

Subsection (a) of section 703 authorizes Comsat, for the purpose of providing international maritime satellite telecommunications services, to be the U.S. designated entity to Inmarsat or to such similar international maritime satellite organization and to sign the operating agreement or instruments of Inmarsat or such similar organization.

Subsection (b) of section 703 authorizes Comsat to be the sole owner and operator of satellite earth terminal stations and the U.S. share of the international space segment and associated facilities. Comsat must interconnect its stations and concomitant services with those facilities and services provided by U.S. domestic common carriers and international common carriers, as authorized by the Federal Communications Commission (FCC), and will participate with the carriers

in providing to users international maritime satellite telecommunications services.

Comsat is prohibited from interconnecting with any entity in which it has an ownership interest. This provision eliminates the inherent problems associated with a monopolist dealing with and possibly favoring a subsidiary user.

Subsection (c) of section 703 provides that Comsat will be responsible for meeting all financial obligations as a result of its participation in Inmarsat or in a similar international maritime satellite organization. In addition, Comsat will be the sole U.S. representative in the managing body of Inmarsat or of a similar organization. This section relieves the U.S. Government from any financial responsibility to Comsat for its participation in Inmarsat or in a similar organization.

Subsection (d) of section 703 allows any person, including the Government, to own and/or operate an earth station for the exclusive purposes of training personnel or carrying out experimentation. Such ownership and/or operation must be authorized by the executive branch in the case of the Government, or by the FCC in all other cases.

Subsection (e) provides that the FCC, within 6 months after the enactment of the bill, must determine the operational arrangements under which Comsat will interconnect its services and earth station facilities with U.S. domestic common carriers and internationl common carriers (other than an entity in which Comsat has an ownership interest), for extending maritime satellite telecommunications services within the United States and beyond. Upon determination, the FCC must transmit to Congress a report relating to the determination.

Subsection (f) provides, notwithstanding any provision of State law, that Comsat's articles of incorporation shall enable the board of directors to transact business where the President or his delegate determines that a national emergency exists and that such circumstances would not permit a prompt meeting of the necessary number of directors otherwise required to transact business.

Implementation of policy

Subsection (a) of section 704 sets forth the responsibilities of the Secretary of Commerce under this bill. The Secretary shall (1) supervise Comsat's activities to insure consistency with the national interest; (2) coordinate the activities of governmental agencies (other than the FCC) with responsibilities in the field of telecommunications; (3) insure the availability and utilization of the telecommunications services provided by Inmarsat or such similar international maritime satellite organization for general governmental purposes (the Government is not bound to utilize those services where a separate telecommunications system is required to meet unique governmental needs or is otherwise required in the national interest); and (4) seek to obtain (A) coordinated and efficient use of the electromagnetic spectrum and orbital space and (B) technical compatibility of the space segment with existing communications facilities in the United States and in foreign nations.

Subsection (b) of section 704 authorizes the President to issue in-uctions to Comsat, as are required for foreign policy reasons, with pect to the corporation's relationships and activities with foreign l international entities and governments.

Subsection (c) of section 704 lists the FCC's responsibilities under bill: (1) The Commission shall institute proceedings to carry out provisions of section 703(b) and section 703(c) of this title; (2) it ll make recommendations to the Secretary of Commerce to assist the Secretary's supervision of the corporation, and it shall make ommendations to the President in order to assist him in issuing tructions to Comsat, pursuant to this section; (3) it shall grant thorizations under titles II and III of the Communication Act of 34 to enable Comsat (A) to provide to the public through intercon-cting carriers space segment channels of communications obtained m Inmarsat or such similar international maritime satellite orga-ation and (B) to construct and operate the satellite earth terminal tions in the United States; (4) the Commission shall establish pro-lures to provide for the continuing review of the telecommunications ivities of Comsat as the U.S. designated entity to Inmarsat or such ilar organization; and (5) the FCC shall prescribe rules to carry t the provisions of this title.

Subsection (d) of section 704 authorizes the FCC to issue instructions Comsat on matters falling within its regulatory jurisdiction.

dy and structure of Comsat

Section 705 provides that the FCC must conduct a study of Comsat d report to Congress as to whether Comsat is able to fulfill its ligations and functions under this bill, the Communications Act of 34, and the Communications Satellite Act of 1962. The report must transmitted to Congress within 12 months after the date of enact-nt of this title and contain a statement of its findings and conclu-ns, any action taken by the Commission related to such findings and nclusions, and any recommendations by the Commission for appro-iate action or legislation.

dy of public maritime coast station services

Section 706 provides that the FCC conduct a study of public mari-ne coast station services, particularly high seas services, to termine whether the FCC's rules and regulations need changing in ler to provide for more modern and effective maritime telecom-nications services. Eighteen months after the enactment of this le the Commission must have reported to Congress concerning the dy.

dy of radio navigation systems

Under section 707, the President is to study all Government radio vigation systems so as to develop a Government-wide plan to reduce oliferation and duplication. The President shall transmit to Congress report on the study within 12 months of the date of enactment of is title.

CHANGES IN EXISTING LAW

In compliance with subsection (4) of Rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets; new matter is printed in italic; existing law in which no change is proposed is shown in roman):

COMMUNICATIONS ACT OF 1934

* * * * * * *

TITLE VI—MISCELLANEOUS PROVISIONS

* * * * * * *

TITLE VII—INTERNATIONAL MARITIME SATELLITE TELECOMMUNICATIONS

DECLARATION OF POLICY AND PURPOSE

SEC. 701. (a) The Congress hereby declares that it is the policy of the United States to provide for the participation of the United States in an organization which is established or empowered to develop and operate an international maritime satellite telecommunications system (hereinafter in this title referred to as 'the organization'). Such participation shall be in either the International Maritime Satellite Organization or another international maritime satellite telecommunications organization. Such system shall have facilities and services which will serve maritime commercial and safety needs of the United States and foreign countries.

(b) It is the purpose of this title to provide that the participation of the United States in the organization specified in subsection (a) of this section shall be through the Communications Satellite Corporation, which constitutes a private entity operating for profit, and which is not an agency or establishment of the Federal Government.

DEFINITIONS

SEC. 702. For purposes of this title—

(1) the term "common carrier" has the meaning given it in section 3(h) of this Act;

(2) the term "corporation" means the Communications Satellite Corporation incorporated on February 1, 1963, under section 301 of the Communications Satellite Act of 1962;

(3) the term "satellite earth terminal station" means a complex of communications equipment located on land, operationally interconnected with one or more terrestrial communications systems, and capable of transmitting telecommunications to, or receiving telecommunications from, the space segment;

(4) the term "space segment" means any satellite or capacity on a satellite maintained under the authority of the organization, for the purpose of providing international maritime telecommunications services and the tracking, telemetry, command, control, monitoring, and related facilities and equipment required to support the operation of such satellite or capacity;

(5) the term "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States; and

(6) the term "person" includes an individual, partnership, association, joint stock company, trust, or corporation.

DESIGNATED OPERATING ENTITY

SEC. 703. (a)(1) The Communications Satellite Corporation is reby designated as the sole operating entity of the United States for rticipation, for the purpose of providing international maritime tellite telecommunications services, in the organization.

(2) The corporation may participate in and is hereby authorized to gn the operating agreement or other like instruments of the organization the sole designated operating entity of the United States.

(b) The corporation—

(1)(A) subject to the provisions of subsection (d) of this section, shall be the sole owner and operator of any satellite earth terminal station in the United States; and

(B) shall interconnect such stations, and the maritime satellite telecommunications provided by such stations, with the facilities and services of United States domestic common carriers and international common carriers, other than any common carrier, system, or other entity in which the corporation has any ownership interest, as authorized by the Commission; and

(2) may establish, own, and operate the United States share of the jointly owned international space segment and associated ancillary facilities.

(c) The corporation shall be responsible for fulfilling any financial bligation placed upon the corporation as a signatory to the operating greement or other pertinent instruments, and any other financial obligaon which may be placed upon the corporation as the result of a convenon or other instrument establishing the organization. The corporation hall be the sole United States representative in the managing body of the rganization.

(d) Any person, including the United States Government or any agency hereof, may be authorized, in accordance with paragraph (1) or (2) of his subsection, to be the sole owner or operator, or both, of any satellite arth terminal station if such station is used for the exclusive purposes f training personnel in the use of equipment associated with the operation nd maintenance of such station, or in carrying out experimentation reating to maritime satellite telecommunications services: Provided, That—

(1) if such person is the United States Government or any agency thereof, such satellite earth terminal station shall have been authorized to operate by the Executive department charged with such responsibility; or

(2) in all other cases, such satellite earth terminal station shall have been authorized by the Commission.

(e) The Commission shall determine the operational arrangements nder which the corporation shall interconnect its satellite earth terminal tation facilities and services with United States domestic common carriers and international common carriers, other than any common carrier, ystem, or other entity in which the corporation has any ownership

interest, for the purpose of extending maritime satellite telecommunications services within the United States and beyond. The initial determination shall be made by the Commission no later than 6 months after the date of the enactment of this title, and the Commission shall thereupon transmit to the Congress a report relating to such determination.

(f) Notwithstanding any provision of State law, the articles of incorporation of the corporation shall provide for the continued ability of the board of directors of the corporation to transact business under such circumstances of national emergency as the President or his delegate may determine would not permit a prompt meeting of the number of directors otherwise required to transact business.

IMPLEMENTATION OF POLICY

SEC. 704. (a) The Secretary of Commerce shall—

(1) exercise such supervision over the corporation as may be necessary to ensure that the activities of the corporation are consistent with the national interest of the United States;

(2) coordinate the activities of Federal agencies with responsibilities in the field of telecommunications (other than the Commission), so as to ensure that there is full and effective compliance with the provisions of this title;

(3) take all necessary steps to ensure the availability and appropriate utilization of the telecommunications services provided by the organization for general governmental purposes, except in any case in which a separate telecommunications system is required to meet unique governmental needs or is otherwise required in the national interest; and

(4) exercise his authority in a manner which seeks to obtain coordinated and efficient use of the electromagnetic spectrum and orbital space, and to ensure the technical compatibility of the space segment with existing communications facilities in the United States and in foreign countries.

(b) The President is authorized to issue instructions to the corporation in connection with its relationships and activities with foreign governments and international entities and other organizations (including the organization) as may be necessary to ensure that such relationships and activities are consistent with the foreign policy of the United States.

(c) The Commission shall—

(1) institute such proceedings as may be necessary to carry out the provisions of sections 703(b) and 703(e) of this title;

(2) make recommendations to—

(A) the Secretary of Commerce, for the purpose of assisting the Secretary in supervising the corporation pursuant to subsection (a)(1) of this section; and

(B) the President, to assist the President in his issuance of instructions to the corporation pursuant to subsection (b) of this section;

(3) grant such authorizations as may be necessary under title II and title III of this Act to enable the corporation—

(A) to provide to the public, pursuant to section 703(b)(1)(B) of this title, space segment channels of communication obtained from the organization; and

(B) to construct and operate such satellite earth terminal stations in the United States as may be necessary to provide sufficient access to the space segment;

(4) establish procedures to provide for the continuing review of the telecommunications activities of the corporation as the United States signatory to the operating agreement or other like instruments; and

(5) prescribe such rules as may be necessary to carry out the provisions of this title.

(d) The Commission is authorized to issue such instructions to the corporation with respect to regulatory matters within the jurisdiction of the Commission.

STUDY OF STRUCTURE AND ACTIVITIES OF COMMUNICATIONS SATELLITE CORPORATION

SEC. 705. (a) The Commission shall conduct a study of the corporate structure and operating activities of the corporation, with a view toward determining whether any changes are required to ensure that the corporation is able to fulfill its obligations and carry out its functions under this title, this Act, and the Communications Satellite Act of 1962.

(b) The Commission shall transmit a report to the Congress no later than 12 months after the date of the enactment of this title relating to the study of the corporation conducted under subsection (a) of this section. Such report shall contain a detailed statement of the findings and conclusions of such study, any action taken by the Commission related to such findings and conclusions, and any recommendations of the Commission for such legislative or other action as the Commission considers necessary or appropriate.

STUDY OF PUBLIC MARITIME COAST STATION SERVICES

SEC. 706. (a) The Commission shall conduct a study of public maritime coast station services, as that term is defined in 47 CFR Part 81, with particular emphasis on high seas services, with a view toward determining whether the rules and regulations of the Commission and the assignment of licenses and radio frequencies in effect on the date of the enactment of this title should be subject to any alteration in order to establish a systematic approach for the provision of modern and effective maritime telecommunications systems.

(b) The Commission shall transmit a report to the Congress no later than 18 months after the date of the enactment of this title relating to the study of public maritime coast station services conducted under subsection (a) of this section. Such report shall contain a detailed statement of the findings and conclusions of such study, any action taken by the Commission related to such findings and conclusions, and any recommendations of the Commission for such legislative or other action as the Commission considers necessary or appropriate.

STUDY OF RADIO NAVIGATION SYSTEMS

SEC. 707. (a) The President, in conjunction with Government agencies which will or may be affected by the development of a Government-wide radio navigation plan, shall conduct a study of all Government radio navigation systems to determine the most effective manner of reducing the

proliferation and overlap of such systems. The objective of such study shall be the development of such a plan.

(b) The President shall transmit a report to the Congress no later than 12 months after the date of the enactment of this title relating to the study conducted under subsection (a) of this section. Such report shall contain a detailed statement of the findings and conclusions of such study, any action taken by the President related to such findings and conclusions, and any recommendations of the President for such legislative or other action as the President considers necessary or appropriate for implementation of a Government-wide radio navigation plan.

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Calendar No. 959

95TH CONGRESS
2d Session

SENATE

REPORT
No. 95-1037

STANDING BEAR LAKE

JULY 25 (legislative day, MAY 17), 1978.—Ordered to be printed

Mr. RANDOLPH, from the Committee on Environment and Public Works, submitted the following

REPORT

[To accompany S. 3342]

The Committee on Environment and Public Works reports an original bill (S. 3342), to name a lake which has been completed as part of the Papillion Creek basin project as the "Standing Bear Lake," and recommends that the bill do pass.

PURPOSE

The purpose of S. 3342, as reported, is to authorize the naming of Military Lake in the Papillion Creek project in Nebraska as "Standing Bear Lake."

GENERAL STATEMENT

Standing Bear was a chief of the Poncas. He is of great historic and symbolic importance to Indian people. He is also to be remembered and celebrated as an individual who believed in the cause of freedom.

In 1877 the Ponca Tribe was relocated to Indian Territory by the Federal Government. This move resulted in suffering and death. In 1879 Chief Standing Bear, in violation of Government orders, returned to Nebraska to bury his son. For this he was arrested and tried. At his trial the judge declared for the first time that an Indian was a person within the naming of the law and thus a citizenship reference for our native Americans was first made.

This trial and its attendant publicity prompted President Rutherford B. Hayes to rule that the Poncas should be entitled to return to their lands along the Niobrara River. The site of this famous trial was Fort Omaha which is only a few miles from the damsite which is proposed for naming by this bill.

Chief Standing Bear's courage served to substantiate the basic rights of Americans in this country.

COST OF LEGISLATION

Section 252(a)(1) of the Legislative Reorganization Act of 1970 requires publication in this report of the committee's estimate of the cost of the reported legislation, together with an estimate prepared by any Federal agency. There is no cost to implementing this legislation.

Section 403 of the Congressional Budget and Impoundment Control Act requires publication of a cost estimate by the Congressional Budget Office. That report follows:

CONGRESSIONAL BUDGET OFFICE,
U.S. CONGRESS,
Washington, D.C., June 26, 1978.

Hon. JENNINGS RANDOLPH,
Chairman, Committee on Environment and Public Works, U.S. Senate, 4202 Dirksen Senate Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed an original bill to rename the lake known as Military Lake which has been completed on site 16 of the Papillion Creek basin project as "Standing Bear Lake," as ordered reported by the Senate Committee on Environment and Public Works, June 22, 1978.

Based on this review, it appears that no significant cost to the Government would be incurred as a result of enactment of this bill.

Sincerely,

ALICE M. RIVLIN, *Director.*

ROLLCALL VOTES

Section 133 of the Legislative Reorganization Act of 1970 and the rules of the Committee on Environment and Public Works require that any rollcall votes be announced in this report. During the committee's consideration of this measure no rollcall votes were taken.

REGULATORY IMPACT

This legislation will cause no change in regulatory activity by the Federal Government or by private business.

CHANGES IN EXISTING LAW

This legislation makes no changes in existing law.

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Calendar No. 960

95TH CONGRESS
2d Session

SENATE

REPORT
No. 95-1038

CHET HOLIFIELD BUILDING

JULY 25 (legislative day, MAY 17), 1978.—Ordered to be printed

Mr. RANDOLPH, from the Committee on Environment and Public Works, submitted the following

REPORT

[To accompany H.R. 12138]

The Committee on Environment and Public Works, to which was referred the act (H.R. 12138) to name a certain building in Laguna Niguel, Calif., the "Chet Holifield Building," having considered the same, reports favorably thereon without amendment and recommends that the act do pass.

PURPOSE OF THE LEGISLATION

The purpose of H.R. 12138, as reported, is to authorize the naming of the Federal Building at Laguna Niguel, Calif., the "Chet Holifield Building."

GENERAL STATEMENT

Congressman Chet Holifield was born in Mayfield, Ky., on December 3, 1903. He was educated in the public schools of Arkansas and has resided in Montebello, Calif., since 1920. For many decades, he has served his community, his State, and his country with high distinction and dedicated service.

Chet Holifield was elected to Congress in 1942 as the first representative from the newly reapportioned 19th Congressional District of California and was reelected to 14 succeeding terms of Congress. He distinguished himself as a conscientious legislator and valuable congressional leader. He served as chairman of the Joint Committee on Atomic Energy in the 87th, 89th and 91st Congresses and as vice chairman of the Joint Committee in the 88th and 90th Congresses.

Over many years the Congressman was instrumental in the development of the atom in the military and in the transitional use of atomic energy from the military to the commercial sector.

In recognition of Chet Holifield's outstanding expertise, he was appointed as congressional adviser or delegate to numerous commis-

sions and international conferences. He was the representative of the Joint Committee on Atomic Energy at the first organizational meeting of the International Atomic Energy Agency in Vienna, Austria in 1957, and he served as congressional adviser to the U.S. delegations to the 3d, 7th, 9th, 12th, 13th and 14th General Conferences of the International Atomic Energy Agency between 1959 and 1970.

Chet Holifield devoted much of his illustrious career to pursuing the peaceful uses of atomic energy. He was congressional adviser to the U.S. delegations to the International Conferences on the Peaceful Uses of Atomic Energy in Geneva, Switzerland, in 1955 and 1971; to the Conference on the Discontinuance of Nuclear Weapons Tests at Geneva in 1959 and 1961; and to the Disarmament Conferences at Geneva from 1967 through 1971.

Chet Holifield also devoted much of his talents to improving Government. During his tenure in Congress he served as chairman of the House Committee on Government Operations and as chairman of the Subcommittee on Legislation and Military Operations, House Committee on Government Operations. He examined the creation of more departments and more reorganizations than perhaps any other person in the Congress. In addition, he was vice-chairman of the Commission on Government Procurement from 1970 through 1972, and served as a member of the Commission on Organization of the executive branch of Government.

The Congressman's distinguished career has been recognized and noted by his constituents and the people of his country. He is the recipient of numerous awards, including the Congressional Distinguished Service Award of the American Political Science Association and the National Security Award of the U.S. Civil Defense Council. He holds a number of honorary degrees from distinguished American colleges.

it is in further recognition of Chet Holifield's long and distinguished career, and in view of his outstanding service to the people of his district and to his country that the Senate Committee on Environment and Public Works reports the bill to name, in his honor, the Federal building at Laguna Niguel, Calif., the "Chet Holifield Building."

Committee Rule

This bill is in compliance with rule 14—"Naming of Public Facilities"—of the Senate Committee on Environment and Public Works which states, "No building, structure or facility authorized by the committee, shall be named for any living person, except for Presidents and Vice Presidents of the United States, or former Members of Congress over 70 years of age."

Rollcall Votes

Section 133 of the Legislative Reorganization Act of 1970, and the rules of the Committee on Environment and Public Works, require that any rollcall votes be announced in this report. During the committee's consideration of this measure no rollcall votes were taken. The measure was ordered reported unanimously by a voice vote of the committee.

Regulatory Impact Evaluations

Subsection 5 of rule XXIX of the Standing Rules of the Senate requires the committee to evaluate the regulatory impact of the reported bill.

This bill will impose no new regulatory activity.

Cost of Legislation

Section 252(a)(1) of the Legislative Reorganization Act of 1970 requires publication in this report of the committee's estimate of the cost of reported legislation, together with an estimate prepared by any Federal agency. There is no cost to implementing this legislation.

In accordance with section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared a report on the cost to be incurred by the Federal Government resulting from the enactment of this legislation. Such cost estimate follows:

Congressional Budget Office,
U.S. Congress,
Washington, D.C., June 23, 1978.

Hon. Jennings Randolph,
Chairman, Committee on Environment and Public Works,
U.S. Senate, Washington, D.C.

Dear Mr. Chairman: Pursuant to section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed H.R. 12138, a bill to rename the Federal building in Laguna Niguel, Calif., the "Chet Holifield Building," as ordered reported by the Senate Committee on Environment and Public Works, June 22, 1978.

Based on this review, it appears that no additional cost to the government would be incurred as a result of enactment of this bill.

Sincerely,

Alice M. Rivlin, *Director.*

Changes in Existing Law Made by the Bill

This legislation requires no change in existing law.

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Calendar No. 961

95TH CONGRESS } SENATE { REPORT
2d Session } { No. 95-1039

EXPORT-IMPORT BANK ACT AMENDMENTS OF 1978

JULY 26 (legislative day MAY 17), 1978.—Ordered to be printed

Mr. CULVER, from the Committee on Environment and Public Works, submitted the following

REPORT

[To accompany S. 3077]

The Committee on Environment and Public Works, to which was referred the bill (S. 3077) to amend and extend the Export-Import Bank Act of 1945, and for other purposes having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

GENERAL STATEMENT

After 7 years, the requirements of the National Environmental Policy Act (NEPA) have been fairly well-integrated into domestic decisionmaking processes by Federal agencies. However, many Federal agencies do not apply NEPA to all international and extraterritorial actions.

In December of 1975, as part of a settlement agreement with public interest litigants, the Agency for International Development (AID) agreed to publish regulations requiring the preparation of environmental impact statements and assessments for certain AID projects conducted abroad. Those regulations were issued on June 30, 1976, and have been operative since that time. In September 1976, the Council on Environmental Quality (CEQ), in a memorandum to Federal agency heads, stated that NEPA applies to "all significant effects of proposed Federal actions . . . in the United States, in other countries, and in areas outside the jurisdiction of any country." Draft regulations on the international application of NEPA based upon the position taken in the CEQ memorandum were circulated to these agencies by CEQ in January of this year in conjunction with the Council's general effort to reform and clarify NEPA procedures. The position taken in the CEQ memorandum has been disputed by some parties and supported by others. Additionally, in June 1977, the Natural Resources

Defense Council (NRDC) filed suit to compel the Export-Import Bank to apply NEPA to its activities, and to prepare an environmental impact statement (EIS) before deciding to finance a major Federal action which would have significant environmental impact.

In response to these events, several Federal agencies with extra-territorial activities have been holding discussions with the Council on Environmental Quality seeking to define and differentiate the circumstances when they are required to prepare conventional environmental impact statements for their activities abroad and when it is appropriate to prepare less stringent environmental assessments. Except for the Agency for International Development, however, few agencies have completed this process.

The Senate Committee on Banking, Housing, and Urban Affairs adopted section 5 of S. 3077 which would exempt Export-Import Bank activities which have no environmental impact within the United States from any rule, regulation, or interpretation pursuant to NEPA. Section 5 would apply except as otherwise provided by a subsequently enacted law.

The Committee on Environment and Public Works, which has jurisdiction over the National Environmental Policy Act, asked for and was granted referral of S. 3077. Section 5 was deemed of sufficient importance that the committee scheduled 2 days of hearings to study the details and ramifications of that provision. The hearings were conducted by the Subcommittee on Resource Protection on June 20 and July 11, 1978.

Among questions which the committee examined in the hearings were the following:

(1) The practical aspects involved in Federal agencies preparing environmental impact statements and assessments on their actions abroad.

(2) The status of ongoing negotiations between the Council on Environmental Quality and agencies with foreign operations on how to apply NEPA in the foreign arena.

(3) The concerns of these and other agencies, as well as the exporting and environmental communities, about the application of NEPA, particularly the requirements of section 120(2)(C), to American activities abroad

(4) The experience of the Agency for International Development in applying NEPA to its foreign operations.

The committee, having studied the above questions in detail, voted unanimously to recommend to the Senate that section 5 be deleted from the bill. Given the complexity of the issue, it would be inappropriate to legislative further in the absence of a concrete proposal by the administration and without additional hearings. The committee reserves the option to recommend further action to the Senate, if necessary, after having studied the regulations to be proposed by the administration.

The Office of the White House Counsel advises that an administration position will be presented to the committee by August 1, 1978. This is in accord with testimony given on July 11 by Herbert Hansel, Legal Advisor to the State Department:

> The State Department and the Council have been meeting frequently and constructively toward resolving the remaining

issues, with White House assistance. In view of this substantial progress the staff expect an agreed and approved program can be achieved by the end of this month.

Meeting this deadline is important. It is essential that the product f the administration's ongoing deliberations be available prior to the me the bill is brought to the Senate floor. The committee, having wice been promised such product and then disappointed, underscores he urgency of this need.

It is incumbent upon the administration to address and reconcile its regulations several concerns. These include the following:

(1) Increasing the awareness and understanding of Federal decision akers concerning significant environmental impacts of Federal tions abroad.

(2) Pursuing U.S. environmental interests in concert with equally ressing national security and foreign policy goals of the United States.

(3) Fulfilling requirements of diplomacy.

(4) Encouraging international commercial competition of American oods.

(5) Providing flexible public review procedures.

(6) Enlisting the efforts of agencies in reviewing environmental ffects and mitigation procedures.

(7) Recognizing the particular mission and procedures of imple- enting agencies of Government so as to minimize both time and nancial burdens upon agency actions.

(8) Exploring alternatives to unilateral actions by the United tates, including initiatives, resolutions and programs designed to aximize international cooperation in anticipating and preventing a ecline in the quality of the world environment.

The committee remains concerned about the export position of the nited States. Yet, from the hearing record, it is clear that there ill be sufficient time in the future to consider the concerns of the ederal agencies operating abroad and their clients in the export dustry over application of NEPA abroad. The draft regulations rculated by the Council on Environmental Quality in January have ot even been formally proposed. Furthermore, once proposed, the gulations would not become effective for another 8 months.

Finally, the committee was assured that the operations of the xport-Import Bank have not been hampered by the present state affairs.

The committee conveyed its position to the President in the following letter:

U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
Washington, D.C., July 24, 1978.

he PRESIDENT,
he White House,
Vashington, D.C.

DEAR MR. PRESIDENT: The Committee on Environment and Public Vorks has been considering section 5 of S. 3077, the Export-Import ank authorization bill, which would exempt the Bank from the rovisions of the National Environmental Policy Act (NEPA). On ly 20, the committee voted unanimously to strike section 5 from e bill and to convey this letter to you.

The committee was told on June 20 that the administration position on how to apply NEPA abroad would be prepared by July 11. In testimony delivered at our July 11 hearing, spokesmen for the administration assured us that by August 1 the interagency negotiations would be completed and draft regulations would be presented to the committee.

This issue of foreign application of NEPA will be raised when the bill is debated in the Senate. We are eager to have an administration position formulated prior to that discussion. Because S. 3077 likely will be delayed pending resolution of this matter in the administration, the committee urges that a proposal be completed by that time.

We are anxious to see that consideration is given to the environmental consequences in other countries of Federal decisions, but also that appropriate procedures are outlined to accommodate legitimate foreign policy, national defense and export concerns.

With kind personal regards, I am,

Truly,

JENNINGS RANDOLPH, *Chairman.*

Representative of the testimony given by interested parties at the hearings are the following statements delivered by Russell Train, World Wildlife Fund-U.S., and Jack Carlson, vice president of the Chamber of Commerce of the United States.

STATEMENT OF HON. RUSSELL E. TRAIN, PRESIDENT, WORLD WILDLIFE FUND-U.S.

Mr. Chairman, thank you for the opportunity to appear before you to testify on the question of the National Environmental Policy Act's (NEPA) application to U.S. Government activities abroad. While you have asked for my views on this overall issue, I should note that a later witness, Mr. James Barnes of the Center for Law and Social Policy, will testify on behalf of the World Wildlife Fund, as well as other environmental organizations, on this issue with particular reference to the application of NEPA to the Export-Import Bank. I have read and approve his statement in detail and endorse it for your consideration.

Ten years ago, in the summer of 1968, I participated in the joint House-Senate colloquium that concluded with the first congressional exposition on a national policy for the environment and that served as the basis for the enactment of NEPA 1 year later. I stated then and remain convinced today that "A national policy which fails to recognize the global nature of the human environment would be shortsighted."

It should be a matter of pride that over the past 10 years the United States has exercised a strong leadership role in promoting international environmental cooperation. As this Committee is aware, I have had a close personal involvement with many of these efforts, including the Great Lakes Water Quality Agreement with Canada, the 1972 U.N. Conference on the Human Environment at Stockholm, the effort within the International Whaling Commission to impose a 10-year

moratorium on all whaling, the ocean dumping convention, the endangered species convention, the World Heritage Trust Convention, conventions to control the discharge of vessel wastes and to regulate tanker design, a migratory water-fowl treaty with the Soviet Union, ongoing environmental activities within U.N. organizations and NATO, and a wide variety of bilateral environmental agreements with other nations. I mention all of this—and there is a good deal more—to make the point that in practically all of these important international efforts to safeguard the global environment, the United States has been the major moving force. There is absolutely no question but that the other nations of the world look to the leadership of the United States in this regard. There is also no question but that the example of U.S. environmental policy is enormously influential abroad.

It is even clearer today than it was 10 years ago that the most critical long-range environmental problems can only be dealt with effectively by cooperative efforts among the governments of the world. The Earth and life upon it are an interrelated system and the fundamental processes of life are worldwide in nature. The United States, both in terms of its own long-term welfare and its responsibility as a major world power, can and must assume a leadership role to prevent needless environmental degradation. Fulfilling the mandate of NEPA through application of its broad principles and statutory requirements to all Federal agency activities which cause significant extraterritorial environmental impacts is an important initial step in that direction.

Important lessons have been learned over the last 10 years which strengthen this view. Experience has taught us that to base environmental policies and decisions wholly on historic political boundaries is to ignore reality. As stressed by President Carter in his environmental message last year "Environmental protection does not stop at national boundaries. In the past decade we and other nations have come to recognize the urgency of international efforts to protect our common environment."

Increased awareness of the worldwide character of environmental problems has led to the realization that we need far more environmental information than we now have. Often the chemical cycles and ecological systems are too complex for the full implication and range of their environmental disturbance to be immediately or easily understood. It has become apparent that we cannot assume that environmental impacts will be confined only to local areas.

Many of the impacts of man's activities on the global environment have already become apparent. We know that the disposal of air—and waterborne toxic substances may have impacts over thousands of miles, that may last hundreds, if not thousands of years. Sulfate emissions in one country can cause acid rain in another with resulting adverse impacts on fisheries and vegetation. Climatic impacts of rising atmospheric carbon dioxide levels from increased deforestation and

fossil fuel combustion, may raise global temperature with dramatic environmental effects. Emission of certain chemical compounds capable of reaching the stratosphere could cause a catalytic destruction of the ozone layer, Earth's vital shield from the Sun. Significant destruction of some of the world's most important biological systems—forests, croplands, and grasslands—has already occurred. Of particular concern to the World Wildlife Fund is the accelerating rate of destruction of tropical forests throughout the world accompanied by the permanent loss of numerous species of potential benefit to mankind. The survival of mankind is ultimately dependent on the continued health of natural biological systems.

The application of NEPA to Federal actions abroad would lead to increased awareness and understanding of significant environmental impacts both on the part of U.S. agencies and of the host country. In no way whatsoever does the application of NEPA to Federal actions abroad involve imposing U.S. environmental standards on foreign countries. NEPA does not dictate decisions, nor does it impose specific environmental standards on anybody. Rather, it simply provides a framework for rational and timely consideration of environmental factors as part of the decisionmaking process just as economic, engineering, and other factors are routinely considered. Moreover, it would provide information on environmental impacts to the countries which would be affected by those impacts. Many such countries are poor and lack the resources of the expertise to assess environmental impacts on their own. In this respect, through NEPA, the United States is simply permitting other nations to know for themselves what we would wish to know for ourselves about environmental impacts.

I have not addressed the narrow question of whether NEPA applies to Federal activities beyond the borders of the United States for the simple reason that I consider it well settled by now that NEPA does so apply. There is nothing whatsoever in the statute or its legislative history that suggests a limitation to within U.S. borders.

The application of NEPA to Federal agency actions abroad is wholly consistent with the generally accepted doctrine of international law that each nation must strive to eliminate or mitigate the adverse environmental impacts outside its boundaries resulting from its own actions. This doctrine was expressly incorporated in the 1972 Stockholm Delaration of Environmental Principles, which included the basic tenet that "states have the responsibility to insure that activities within their jurisdiction or control do not cause damage to the environment of other states or areas beyond the limits of national judisdiction."

Mr. Chairman, I will close by saying I strongly oppose the amendment to S. 3077, which would specifically exempt the Export-Import Bank from the National Environmental Policy Act with respect to actions with significant environmental impacts outside of the United States.

I have heard no persuasive argument as to why Eximbank should be treated differently than any other Federal agency. AID is complying with NEPA with respect to its foreign activities and reports no unusual problems. Even the World Bank, which is under no statutory duty to do so whatsoever, makes a regular practice of assessing the environmental and health implications of its activities. To exempt Eximbank would create a bad precedent which would run directly counter to the kind of leadership which the United States has traditionally provided and should continue to provide in environmental matters.

If Congress provides a specific exemption of Eximbank from NEPA, it would be establishing an explicit policy that Eximbank should conduct its activities irrespective of the nature and degree of the environmental impact of those activities abroad. Congress would be declaring expressly that Eximbank need not consider environmental factors in its decisionmaking. In my view, such a policy would be indefensible. If there is any basis for concern that the application of NEPA could create competitive disadvantages for U.S. businesses in commercial markets abroad—and this seems highly speculative to me, the answer lies in expediting the NEPA process not in eliminating it. The responsible course of action at this time is for Eximbank to comply with NEPA and to work closely with CEQ to resolve any special difficulties. The alternative of establishing as U.S. policy that the pursuit of U.S. commercial advantage abroad must take precedence over all other considerations and that specifically the environment "be damned" in this pursuit—so long as it is the environment of foreigners—seems totally unacceptable to me. I hope this committee will find it equally unacceptable.

On a broader note, it is increasingly important that development activities worldwide be part of a comprehensive strategy that gives careful consideration to long-term environmental factors. I would urge AID to undertake comprehensive environmental analyses for each country within which it supports development programs. Increasing emphasis in development programs should be given to maintaining and strengthening the renewable resource base bacause it is on that base that the long-term well-being of peoples will depend. Growing human populations, increasing resource scarcity, and continued technological and economic development make it inevitable that greater attention worldwide be paid to environmental planning and assessment. It is important that Congress lend its support to U.S. leadership in this regard and not move us backward.

Statement by Jack Carlson on Application of NEPA to Eximbank

I am Jack Carlson, vice president and chief economist of the Chamber of Commerce of the United States on whose behalf I am appearing today.

The National Chamber appreciates the opportunity to comment on the extraterritorial extension of the National Environmental Policy Act (NEPA). The Chamber's membership—now consisting of over 70,000 business firms, large and small, over 2,600 chambers of commerce in the United States and overseas, and 1,200 trade and professional associations—is deeply concerned with this issue.

At a time when a maximum effort on U.S. export performance is a clear matter of national priority, the business community is increasingly concerned over the proliferation of regulatory and other measures, which, however well-intentioned, have the effect of inhibiting American exports. In testimony before other congressional committees and regulatory agencies, the Chamber consistently has identified areas in which the U.S. international economic interests are jeopardized by such measures—and proposed the appropriate corrective actions. Examples would include the antiboycott provisions of the Export Administration Act Amendments of 1977, and the efforts to repeal section 911 of the Internal Revenue Code and the Domestic International Sales Corporation (DISC) provisions, and the proposal to tax currently the foreign earnings of subsidiaries of American firms before they are paid to U.S. shareholders as dividends.

In this statement we will summarize the major considerations behind our contention that the National Environmental Policy Act should not be applied to the activities of Export-Import Bank.

1. RESPONSIBILITY OF CONGRESS TO RULE ON APPLICATION OF NEPA

Clearly, aspects of overseas projects that could have serious adverse environmental effects either in a regional or in a global context, should be avoided.

However, U.S. efforts to impose its environmental standards on other countries would raise important foreign policy considerations that appear to be far beyond the intent of Congress in enacting NEPA. Congressional reference to this question, in the provisions of the act, is in terms of "cooperation" and "support", not in terms of procedural requirements.

In dealing with international environmental problems, government agencies were, in effect, directed to adopt a diplomatic and cooperative approach with other countries—an approach that is consistent with Congress' responsibility to resolve through legislation any doubt or controversies that may develop with the act. Certainly, there is no shortage of international consultative machinery through which the necessary cooperative effort could be facilitated.

It has been pointed out, in the debate over the extension of NEPA to Eximbank operations, that in 1974 Congress saw fit to enact separate statutes setting out the environmental responsibilities of the Overseas Private Investment Corporation (OPIC).

As stated in the report of the House International Relations Committee, the purpose of the amendment was "not intended to impose U.S. standards on a foreign country or to challenge the sovereign right of a developing nation to determine how it wishes to reconcile its interests in jobs and income with its interests—and that of the world at large—in a clean environment. On the other hand, the committee intends that, where local environmental protection standards are lacking, OPIC should, consistent with the accomplishment of its overall purpose, encourage U.S. investors to take voluntary steps to lessen the potential adverse environmental effects of projects in which they have a controlling interest."

OPIC operations typically include a much deeper involvement in foreign development projects than Eximbank, which only provides credits and guarantees for U.S. exports. Here it can be concluded that congressional intent respecting environmental guidelines for Eximbank would be, at least, along similarly voluntary and cooperative lines—and would, in that event require specific statutory authority.

2. FEDERAL AGENCIES IN DISAGREEMENT OVER EXTRATERRITORIAL APPLICATION OF NEPA

The effort by the Council on Environmental Quality (CEQ) and other groups to extend NEPA abroad has not gained wide support among the appropriate Federal agencies. While properly agreeing that environmental considerations should be promoted in the conduct of international business, the general reaction among agencies has been to reject the proposals on grounds of practicality and foreign policy as well as legality.

In itself, the existence of such widespread disagreement within the Federal Government demonstrates the need for the most careful consideration of the CEQ proposal.

3. PRACTICAL EFFECTS OF APPLYING NEPA TO EXIMBANK OPERATIONS

In addition to the political considerations implicit in possible transgressions of national sovereignty, the proposed application of NEPA to the Eximbank raises some urgent practical problems. Chief among them is the general effect that NEPA regulations would have in terms of the time necessary to process specific environmental impact statements (EIS). It is a fundamental fact of competitive bidding in international markets that speed in providing financing can be vital. Consequently, a major emphasis in Eximbank's efforts to improve its performance in recent years has been on reducing the response time on credit and guarantee applications. This also applies to the "preliminary commitment" process whereby an exporter can include "promised" Eximbank financing terms in his bid for a foreign order.

Eximbank's average response time for preliminary commitments for direct loans is now 40 days while less than 3 weeks is necessary to process the typical guarantee or insurance transactions.

Given the record to date of the time taken to prepare even routine environmental impact statements under NEPA it is difficult to accept assurances from CEQ that the record with Eximbank would be different. In fact, the time necessary to prepare an environmental impact statement for a foreign project would probably take longer than is the case for a domestic project—the needed facts, by definition, being more difficult to obtain.

The likelihood of delays in the Eximbank financing process caused by the preparation of environmental impact studies conflicts with the Bank's statutory mandate to provide U.S. exporters with competitive financing support. This reinforces the need for clear congressional guidelines to ensure that the Bank's prime function is not eroded by the application of new regulations.

A further consideration in evaluating the adverse impact of NEPA regulations on Eximbank performance is the financial cost of environmental impact statements. For the type of Eximbank transaction that would require an EIS, typical expenses would run into the tens and hundreds of thousands of dollars. This would increase significantly the Bank's operating costs thereby reducing its competitive position vis-a-vis foreign export credit agencies.

As it is, considering the time and cost implications of possible Eximbank-NEPA requirements, the interest of foreign buyers in U.S. goods and services is more likely to be reduced than enhanced.

Eximbank is already unique among the Government export credit agencies of our competitors in being saddled by statutory obligations to consider scarce materials, human rights, domestic employment effects and even the size of projects in regard to the extension of direct credits. Nevertheless, over the past 5 years, Eximbank has, on the average, assisted over $11 billion in exports per year. According to Bureau of Labor statistics data, this volume of exports represents conservatively some 440,000 jobs throughout the American economy.

However, despite this strong performance, the Eximbank's programs do not compare favorably with those available from our foreign competitors.

In 1976, the official export credit agencies in Japan authorized nearly five times the dollar volume of Eximbank authorizations; France about three times as much; Germany and the U.K. each one and one-half times Eximbank. Of the six major export financing countries, the United States supported the smallest proportion of its total exports that year—8 percent, compared with 49 percent for Japan and 40 percent for France. Although the terms of the financing are now often

close to those of our competitors, many Eximbank users continue to be disappointed with the overall competitiveness of the Bank's programs given the greater flexibility enjoyed by other government's export finance agencies.

In view of this situation, it is difficult to arrive at any other conclusion but that the addition of NEPA requirements to the Bank's operations would reduce further the competitiveness of U.S. exporters. Above all, in addition to the adverse impact it would have on U.S. exports, there is nothing in the proposed NEPA process that would assure a cleaner environment in other countries.

To summarize, the application of NEPA to the Eximbank should be avoided both for practical, export-related considerations as well as for considerations of legality and the intent of Congress.

The National Chamber urges the subcommittee to adopt Senator Stevenson's amendments to S. 3077 (to extend and amend the Export-Import Bank Act) that would prevent the application of NEPA to activities of the Eximbank. This amendment would provide Congress with the time to study all aspects of this complex issue prior to developing legislation in which environmental guidelines for the Bank would be clearly and realistically specified.

HEARINGS

The Subcommittee on Resource Protection conducted hearings on June 20 and July 11 to investigate the ramifications of section 5 of S. 3077. Testimony was taken from 10 witnesses representing the export industry, the business community, public interest groups, and key Federal agencies.

The full committee met on July 20, 1978, in markup session at which time it ordered the bill reported as amended.

ROLLCALL VOTES

The committee recorded no rollcall votes in recommending the deletion of section 5. The motion to strike section 5 was by unanimous voice vote.

EVALUATION OF REGULATORY IMPACT

In compliance with paragraph 5 of rule XXIX of the Standing Rules of the Senate, the committee makes the following evaluation of regulatory impact of the reported bill.

Section 102(2)(c) of the National Environmental Policy Act reads as follows: All agencies of the Federal Government shall

> include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement . . . on the environmental impact of the proposed action . . .

The committee recommends deleting section 5 of S. 3077 and intends to review and monitor the regulations to be proposed by the administration.

The committee action will not create new regulatory authority in any area. The bill has no impact on the personal privacy of individuals.

COST OF LEGISLATION

The amendment proposed by the committee will entail no costs beyond those anticipated by the Congressional Budget Office in its original assessment of S. 3077.

CHANGES IN EXISTING LAW

In the opinion of the committee, it is necessary to dispense with the requirements of subsection (4) of rule XXIX of the Standing Rules of the Senate in order to expedite the business of the Senate.

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Calendar No 962

95TH CONGRESS
2d Session

SENATE

REPORT
No. 95–1040

GOLD AND SILVER LABELING AND ADVERTISING ACT

JULY 27 (legislative day, MAY 17), 1978.—Ordered to be printed

Mr. CANNON, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

[To accompany S. 2782]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 2782) to protect consumers from misrepresentative advertising of gold and silver jewelry, and for other purposes having considered the same, reports favorably thereon with amendments and recommends that the bill, as amended, do pass.

PURPOSE

S. 2782, the Gold Silver Labeling and Advertising Act, amends the National Stamping Act, a criminal statute which sets standards for gold and silver quality representations. S. 2782, as amended, would require that: (a) a manufactured article of merchandise of gold or goldware may not be designated as "gold" unless it is of at least 10 karats fineness;

(b) A manufactured article of merchandise of silver, silverware, or silver goods may not be designated as "silver" unless the silver content is nine hundred and twenty-five one-thousandths pure silver;

(c) A manufactured article of "gold" or "silver" could not be advertised as "gold" or "silver" unless such article meets these minimum standards.

BACKGROUND AND NEED

The Congress consistently has been determined to assure the integrity of the representations as to the quality of gold and silver manufactured products. In 1906, the National Stamping Act, a criminal statute, was enacted in order to assure that representations as to the degree of fineness of gold and silver articles of merchandise not be misleading. Recently, the Congress strengthened this act by

adding injunctive remedies against violations of the act and in 1976 tightened standards in regard to gold.

Since 1957, the Federal Trade Commission had provided further protection to the public through the adoption of Federal trade practice rules for the jewelry industry. These trade practice rules provide that only gold articles of 10 or more karats can be marked or described as "gold," and that the term "silver" cannot be used to designate an item unless the item is at least nine hundred and twenty-five one-thousandths pure silver.

These Federal trade practice rules are not binding rules of law but are voluntary industry guidelines. A firm is not subject to liability merely on the ground that it violated a trade practice rule. If the Federal Trade Commission wishes to eliminate such a deviation from the trade practice rules, it would have to institute an administrative proceeding leading to the issuance of a cease and desist order.

In the midseventies a reexamination of these trade practice rules was instituted. This reassessment was in response to the rapidly escalating price of gold which reached $200 an ounce after the fixed price of $35 an ounce for gold was lifted. The Federal Trade Commission directed its Bureau of Consumer Protection to study the issue of minimum standards for gold and silver content of jewelry in order to determine whether a system could be devised to inform consumers of the disadvantages of low karat gold and silver, so that they might make an economic decision which balances decreased price against decreased quality. In furtherance of this investigation, the Federal Trade Commission published in the Federal Register proposed amendments to the trade practice rules for the jewelry industry. In brief, these amendments would have allowed the word "gold" to be used to designate jewelry of less than 10 karats. However, these amendments would also have required that such an item carry a tag which listed its metal composition in order of predominance. This tag would also have had to carry the warning "gold alloys of less than 10 karats can be expected to tarnish and/or corrode." Advertisement of gold jewelry of less than 10 karats would also have been required to contain such a warning.

In regard to silver jewelry, silverware, and silver goods, the word "silver" would have been allowed to be used with articles of less than 0.925 pure silver. But the term "silver" would have to be preceded by the correct designation of the actual silver content.

The Federal Trade Commission received an outpouring of opposition to these proposed amendments from a majority of the jewelry industry and numerous consumers. The staff of the Federal Trade Commission has reported that 98.6 percent of the 1,226 comments were in total opposition. In summary, the major arguments of opponents of this standard were that such a disclosure system would, due to the public's insufficient knowledge of the significance of the jewelry industry's rating system for gold and silver, be misleading, confusing, and difficult to enforce. Also, a number of comments argued that the disclosure tags themselves often might not reach the ultimate consumer.

After analyzing these comments, the Bureau of Consumer Protection recommended that the Federal Trade Commission reject these amendments to the trade practice rules for the jewelry industry. El-

ward D. Steinman, Acting Assistant Director of the Division of Marketing Abuses in the Bureau of Consumer Protection in the Federal Trade Commission, testified at the Senate Commerce, Science, and Transportation Committee hearings on May 10, 1978 that:

> Substantial scientific evidence indicates that low karat gold alloys do not retain the characteristics of gold, such as tarnish and corrosion resistence * * * the evidence showed that the alloys below 10 karats tarnished and corroded at a more significant rate than the higher karat alloys. Furthermore, in many instances, tarnished and corroded jewelry would be difficult, if not impossible to clean.

Mr. Steinman, in regard to articles containing less than 10 karats of gold, concluded:

> It is inherently deceptive to name an article gold with very little gold in it and which no longer has the characteristics associated with gold.

The Federal Trade Commission accepted the recommendations of the Bureau of Consumer Protection and has decided to maintain the trade practice rules requirements that a minimum floor be set in regard to when an article can be designated as "gold" or "silver."

In order to put current standards on a firmer, statutory basis and thereby provide even greater protection to the jewelry industry and consumers, Senator Pell introduced S. 2782, the Gold and Silver Labeling and Advertising Act. S. 2782 in effect incorporates into law the Federal Trade Commission's trade practice rules for the jewelry industry. Senator Pell stated in the Commerce Committee hearings that:

> I believe strongly that the question of minimum precious metal content should be decided by Congress and not left to the uncertainties and vagaries of future regulatory action.

S. 2782 was strongly supported by a significant segment of the jewelry industry, including the Manufacturing Jewelers and Silversmiths of America, a major jewelry organization; the Sterling Silversmiths Guild of America; and the Jewelry Vigilance Committee, which represents approximately 1,688 jewelry manufacturers in the United States. The Federal Trade Commission's Bureau of Consumer Protection also supported S. 2782, stating:

> While the Bureau has urged the Commission to reaffirm the minimum standards for precious metal content in jewelry, we also firmly support S. 2782 to amend the National Stamping Act. We simply believe that compliance would be better with the Federal criminal statute than with the voluntary agency guideline. Moreover, the enforcement of the criminal statute could be expected to be less costly than the Commission's enforcement of the voluntary rule.

S. 2782 as reported prohibits manufactured articles to be advertised as "gold" and/or "silver" unless they meet or exceed the minimum standards required by this legislation. Recent Supreme Court rulings have held that commercial speech is afforded constitutional protection

under the first amendment. The Supreme Court, however, recognized that the first amendment did not bar the regulation of deceptive or misleading commercial speech. The Federal Trade Commission's Bureau of Consumer Protection, as noted earlier, has argued that calling a product "gold" which contains less than 10 karats is inherently deceptive, as such products do not exhibit the expected noble metal qualities of significant corrosion and tarnish resistance. Comments received on the Federal Trade Commission's amendments to the jewelry guides strongly suggest that this problem cannot be cured by supplemental requirements for additional information disclosure, furthermore, this legislation would set minimum standards for gold and silver products. The U.S. Government has numerous laws and regulations which have developed standards for the characteristics of products in order to prevent deception of consumers with regard to the identity of such products. Clearly, the purpose of such requirements would be thoroughly undermined if these requirements did not apply to advertising. Also, the committee's hearings pointed out that advertising has become an increasingly significant aspect of sales in the jewelry industry. Frequently, jewelry now is sold directly to the consumer through catalogs.

The full committee considered S. 2782 on June 21, 1978. The committee amended this legislation to conform to the Federal Trade Commission's Federal trade practice rules for the jewelry industry in regard to silver. The legislation as introduced allowed a manufactured article to be designated as "silver" if it contained nine hundred one thousandths pure silver. The committee raised this minimum standard to nine hundred and twenty-five one thousandths pure silver. This amendment conforms the legislation to the general practice of the jewelry industry and received the endorsement of the Federal Trade Commission's Bureau of Consumer Protection.

During the committee's consideration of S. 2782 it was emphasized that this legislation affects such types of articles as gold and silver jewelry, gold and silverware, and silver goods and does not apply to mined gold and silver in its raw state or bullion or nonmanufactured gold or silver products. After careful review of the legislation, the committee ordered S. 2782, as amended, to be reported favorably without objection.

Estimated Costs

The Congressional Budget Office has submitted to the Commission its estimates as to the cost of this legislation pursuant to section 403 of the Congressional Budget Act of 1974. The Congressional Budget Office submission of July 13, 1978 follows:

Congressional Budget Office,
U.S. Congress,
Washington, D.C., July 13, 1978.

Hon. Howard W. Cannon,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Dirksen Senate Office Building, Washington, D.C.

Dear Mr. Chairman: Pursuant to section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed S.

2782, the Gold and Silver Labeling and Advertising Act, as ordered reported by the Senate Committee on Commerce, Science, and Transportation, June 22, 1978.

Based on this review, it appears that no additional cost to the Government would be incurred as a result of enactment of this bill.

Sincerely,

ALICE M. RIVLIN, *Director.*

REGULATORY IMPACT STATEMENT

In compliance with paragraph 5, rule XXIX of the Standing Rules of the Senate, it is the judgment of the committee that implementation of this legislation as reported will not significantly increase Federal regulation. The legislation in effect incorporates into law the Federal Trade Commission's existing trade practice rules for the jewelry industry. Presently, a firm is not subject to liability merely on the ground that it fails to comply with these voluntary trade practice rules. The Federal Trade Commission, however, can stop such deviation from these trade practice rules by instituting an administrative proceeding leading to the issuance of a cease and desist order. The Bureau of Consumer Protection of the Federal Trade Commission has testified that enactment of this legislation would lead to a more expeditious and less expensive enforcement of these requirements. At this point it is impossible to assess the full impact of this legislation on paperwork requirements, but paperwork requirements should not increase significantly due to passage of this legislation.

SECTION-BY-SECTION ANALYSIS

Section 1 states the short title of the bill, as the "Gold and Silver Labeling and Advertising Act."

Section 2(a) provides that no gold or silver jewelry, goldware, silver goods, or silverware may be advertised in any medium as "gold" or "silver" unless the article meets the minimum standards designated in this bill.

Section 2(b) provides that, in the case of an article or articles of merchandise made in whole or in part of gold or of any of its alloys no representation as to gold content shall be made unless the article or part of the article represented as being made of gold is at least of 10 karat fineness."

Section 2(c) provides that, in the case of an article or articles of merchandise made in whole or in part of silver or any of its alloys that the article or part of the article shall not be designated as "silver" unless it contains at least nine hundred and twenty-five one thousandths parts pure silver.

CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

The Act entitled "An Act forbidding the importation, exportation, or carriage in interstate commerce of falsely or spuriously stamped articles of merchandise made of gold or silver or their alloys, and for other purposes", approved June 13, 1906 (15 U.S.C. 294 et seq.)

SEC. 1. It shall be unlawful for any person, firm, corporation or association, being a manufacturer of or wholesale or retail dealer in gold or silver jewelry or gold ware, silver goods or silverware, or for any officer, manager, director, or agent of such firm, corporation, or association to import or export or cause to be imported into or exported from the United States for the purpose of selling or disposing of the same, or to deposit or cause to be deposited in the United States mails for transmission thereby, or to deliver or cause to be delivered to any common carrier for transportation from one State, Territory, or possession of the United States, or the District of Columbia, to any other State, Territory, or possession of the United States, or to said District, in interstate commerce, or to transport or cause to be transported from one State, Territory, or possession of the United States, or from the District of Columbia, to any other State, Territory, or possession of the United States, or to said District, in interstate commerce, any article of merchandise manufactured after the date when this Act takes effect, and made in whole or in part of gold or silver, or any alloy of either of said metals, and tag, card, or label attached thereto or upon any box, package, cover, having stamped, branded, engraved, or printed thereon, or upon any or wrapper in which said article is incased or inclosed, *or in any advertising irrespective of the medium thereof*, any mark or word indicating or designed or intended to indicate that the gold or silver or alloy of either of said metals in such article is of a greater degree of fineness than the actual fineness or quality of such gold, silver, or alloy, according to the standards and subject to the qualifications set forth in setcions two and three of this Act.

SEC. 2. (*a*) In the case of articles of merchandise made in whole or in part of gold or of any of its alloys so imported into or exported from the United States, or so deposited in the United States mails for transmission, or so delivered for transportation to any common carrier, or so transported or caused to be transported as specified in the preceding section, the actual fineness of such gold or alloy shall not be less by more than one-half of one carat than the fineness indicated by the mark stamped, branded, engraved, or printed upon any part of such article, or upon any tag, card, or label attached thereto, or upon any box, package, cover, or wrapper in which such article is incased or inclosed; except that in the case of watch cases and flat ware, so made of gold or of any of its alloys, the actual fineness of such gold or alloy shall not be less by more than three one-thousandth part than the fineness indicated by the mark stamped, branded, engraved, or printed upon such article, or upon any tag, card, or label attached thereto, or upon any box, package, cover, or wrapper in which such article is incased or inclosed: Provided, That in any test for the ascertainment of the fineness of any article mentioned in this section, according to the foregoing standards, the part of the article taken for the test, analysis, or assay shall be such part or portion as does not contain or have attached thereto any solder or alloy of inferior fineness used for

brazing or uniting the parts of said article: Provided further, That in the case of any article mentioned in this section, in addition to the foregoing tests and standards, the actual fineness of the entire quantity of gold or of its alloys contained in such article, including all solder and alloy of inferior fineness used for brazing or uniting the parts of such article (all such gold, alloys, and solder being assayed as one piece), shall not be less by more than one carat than the fineness indicated by the mark stamped, branded, engraved, or imprinted upon such article, or upon any tag, card, or label attached thereto, or upon any box, package, cover, or wrapper in which such article is incased or inclosed, it being intended that the standards of fineness and the tests or methods for ascertaining the same provided in this section for articles mentioned therein shall be concurrent and not alternative.

(*b*) *No representation as to gold content shall be made unless the article or part of the article represented as being made of gold is at least 10 karat fineness.*

SEC. 3. In the case of articles of merchandise made in whole or in part of silver or any of its alloys so imported into or exported from the United States, or so deposited in the United States mails for transmission, or so delivered for transportation to any common carrier, or so transported or caused to be transported as specified in the first section of this Act, the actual fineness of the silver or alloy thereof of which such article is wholly or partly composed shall not be less by more than four one-thousandth parts than the actual fineness indicated by any mark (other than the word "sterling" or the word "coin") stamped, branded, engraved, or printed upon any part of such article, or upon any tag, or label attached thereto, or upon any box, package, or wrapper in which such article is incased or inclosed; and that no such article or tag, card, or label attached thereto, or box, package, cover, or wrapper in which such article is incased or inclosed shall be marked, stamped, branded, engraved, or printed with the word "sterling" or "sterling silver" *or* "*silver*" or any colorable imitation thereof, unless such articles or parts thereof purporting to be silver contains nine hundred and twenty-five one-thousandth parts pure silver; and that no such article, tag, card, label, box, package, cover, or wrapper shall be marked, stamped, branded, engraved or printed with the words "coin" or "coin silver" or colorable imitation thereof unless such article or parts thereof purporting to be silver contains nine hundred one-thousandth parts pure silver: Provided That in the case of all such articles whose fineness is indicated by the word "sterling" or the word "coin" there shall be allowed a divergence in the fineness of four one-thousandth parts from the foregoing standards: Provided, That in any test for the ascertainment of the fineness of any such article mentioned in this section according to the foregoing standards the part of the article taken for the test, analysis, or assay shall be such part or portion as does not contain or have attached thereto any solder or alloy of inferior fineness used for brazing or uniting the parts of such article: Provided further, That in the case of any article mentioned in this section, in addition to the foregoing tests and standards, the actual fineness of the entire quantity of silver or of its alloys contained in such article, including all solder and alloy of inferior fineness used for brazing or uniting the parts of such article (all such silver, alloys,

and solder being assayed as one piece), shall not be less by more than ten one-thousandth parts than the fineness indicated by the mark stamped, branded, engraved, or imprinted upon such article, or upon any tag, card, or label attached thereto, or upon any box, package, cover, or wrapper in which such article is incased or inclosed, it being intended that the standards of fineness and the tests or methods for ascertaining the same provided in this section for articles mentioned therein shall be concurrent and not alternative.

SEC. 4. * * *

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Calendar No. 963

35TH CONGRESS
2d Session

SENATE

REPORT
No. 95-1041

REQUIRING CONRAIL TO MAKE PREMIUM PAYMENTS UNDER CERTAIN MEDICAL AND LIFE INSURANCE PLANS

JULY 27 (legislative day, MAY 17), 1978.—Ordered to be printed

Mr. LONG, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

[To accompany H.R. 5646]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (H.R. 5646) to amend the Regional Rail Reorganization Act of 1973 to require ConRail to make premium payments under certain medical and life insurance policies, to provide that ConRail shall be entitled to a loan under section 211(h) of such act in an amount required for such premium payments, and to provide that such premium payments shall be deemed to be expenses of administration of the respective railroads in reorganization, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

PURPOSE AND SUMMARY

The reported bill requires ConRail to assume the obligations of the estates of certain insolvent railroads for medical and life insurance coverage of employees who retired prior to the date the assets of such railroads were transferred to ConRail. The coverage is to be funded by a loan to ConRail from the U.S. Railway Association under section 211(h) of the Regional Rail Reorganization Act of 1973. ConRail will have claims against the estates of the railroads for funds expended in fulfillment of their contractual obligations to their former employees.

BACKGROUND AND NEEDS

H.R. 5646 amends section 303(b)(6) of the Regional Rail Reorganization Act of 1973 (3R Act) to provide for continuation of certain medical and life insurance coverage for retirees of the bankrupt rail-

roads whose assets have been conveyed to ConRail. The persons affected are former employees of these railroads whose employment was not governed by a collective bargaining agreement and who retired prior to April 1, 1976, the date of the conveyance to ConRail. These retirees are legally entitled to the insurance benefits in question by reason of their prior service with the railroads but face the prospect of permanently losing such benefits due to the bankruptcy of their former employers. This loss could result in severe financial hardship for many of these individuals who are living on fixed incomes and could secure this insurance coverage only at substantial personal expense, if at all.

The bill directs ConRail to make premium payments necessary for continuation of the insurance coverage and, where the coverage has lapsed after the conveyance date, to obtain similar coverage for the retirees and pay claims for benefits that would have been paid by the insurer but for the lapse of coverage. The bill provides that ConRail shall be entitled to a loan under section 211(h) of the 3R Act from the U.S. Railway Association (USRA) to fund the insurance coverage. Upon payment, ConRail will have claims against the estates of the insolvent railroads in amounts equal to the amounts paid for insurance coverage for preconveyance retirees of the respective railroads.

To the extent practicable, the section 211(h) loan for benefit payments and premiums is to be made available in a lump sum to assure ConRail maximum flexibility in providing the insurance coverage and benefits in the manner deemed most feasible and economical. While not all medical and life insurance policies for retired individuals were allowed to lapse after April 1, 1976, continuation of policies presently in effect may not be possible, or economical, under the terms of the policies after passage of the bill. Therefore, ConRail is granted wide latitude in determining the means by which it is to provide the levels of insurance coverage to which the retirees are entitled. With respect to payment of claims for benefits where insurance coverage had been permitted to lapse, a single loan to ConRail under section 211(h) for these claims may not be practicable because many of these claims may not be made known to ConRail in the immediate future. Hence, for claims of this nature, periodic loans, in amounts based on actual claims as they are processed and liquidated, may be necessary.

Congress had attempted to provide for this insurance protection in section 203 of the Rail Transportation Improvement Act of 1976 (RTIA). Section 203 of RTIA made eligible for loans under section 211(h) of the 3R Act obligations of the estates of the railroads for amounts required to fund medical and life insurance benefits accruing to preconveyance retirees on account of their employment with the railroads.

However, the reorganization court held in the case *In the Matter of Erie Lackawanna Railway Co.*, subsequently affirmed by the U.S. Court of Appeals for the Sixth Circuit, 548 F. 2d 621 (1977), that these obligations are not administrative claims against the estate of the Erie Lackawanna and thus do not meet a precondition to eligibility for section 211(h) loans. The effect of the decision is that, although, as the sixth circuit acknowledges, the retirees have vested contract rights to the insurance benefits in question, the estate of the railroad is under no

present legal obligation to make the premium payments necessary to fund them. To modify the unfortunate effect of this decision and to assure that the protection afforded the retirees of the bankrupt railroads by the insurance coverage is continued, H.R. 5646 specifies that amounts required to fund the coverage shall be deemed expenses of administration of the estates of the railroads. Hence, these obligations meet a precondition to eligibility for a section 211(h) loan, which ConRail may obtain to pay them.

COMMITTEE AMENDMENT

In order to avoid the same problem raised by the courts and the previous legislation, the committee agreed to add an amendment that makes it clear, that only for purposes of making a section 211(h) loan, are these expenses to be deemed expenses of administration. In this regard, it is useful to examine the attitude of the U.S. Railway Association on this issue, as reflected in the association's comments for the record on H.R. 5646 and S. 1324, during the committee's hearings on the authorization for appropriations for the U.S Railway Association for fiscal year 1979, held on February 8, 1978:

> Senator SCHMITT. I should like to divert your attention to bills now pending before our committee, S. 1324 and H.R. 5646. These bills were designed to categorize certain medical and life insurance payments of retirees of the bankrupt estates which now make up ConRail as claims of administration of the estates. The bills are designed to accomplish what similar language in the Rail Transportation Improvement Act of 1976 (Public Law 94–555) failed to accomplish before the Erie Lackawanna bankruptcy court. Specifically, to enable the trustees of the bankrupt estates to obtain 211(h) loans from USRA to pay these insurance premiums by categorizing them as "claims of administration" and giving the Government highest priority lien.
>
> The Erie Lackawanna bankruptcy court held that language previously passed was faulty and refused to classify the expense as a claim of administration.
>
> As you know, H.R. 5645 passed the House last week. Several members in that body noted that at least one of the bankrupt estates has no legal contractual obligation to pay these premiums but is continuing to do so on a "moral obligation" to their former employees. Passage of either the Senate or House version may create a legal debt against the estate where none would have existed normally. This sounds dangerously close to a "taking."
>
> These "social costs" resulting from the reorganization should have been provided for in section 509 of the 3–R Act but were inadvertently left out.
>
> How would you propose that this situation be remedied? Possible solutions would be to create a fund within USRA to cover these social costs if the particular estate's bankruptcy court finds that at a minimum no contractual obligation to to pay these premiums exist.

What are your thoughts on the proposal? If you want to detail them for the record, I am sure it would be fine.

Mr. COLE. We will be happy to make a detailed reply. We testified on this in the House. The point made was that within the confines of the 3-R Act, it was sort of intended that these types of claims would be taken care of in 211(h).

But since they legally are not found to be administrative expenses, 211(h) was—it was drafted past the covenants. However, it is probably true when you say it gets close to a "taking" if other courts upheld this approach. It is possible that the association would find that its loan to whatever entity, ConRail, probably to pay these expenses would be uncollectable. At that point, it would become a basic grant. If it is uncollectable by us, it is forgiven, and it ends up not paid.

So, you may get the same result in this approach, that is, in the proposal, as indicated in the question, of just putting a fund in us to take care of a social cost. It probably is a social cost—that through the mechanism of 211(h) will become, if the courts don't go along with the approach, a basic grant.

[The following information was subsequently received for the record:]

COMMENTS ON S. 1324 AND H.R. 5646

The proposed legislation would amend section 303(b)(6) of the Regional Rail Reorganization Act of 1973 to require ConRail to make premium payments necessary for continuation of medical and life insurance coverage for persons who were employed by a railroad whose assets have been conveyed to ConRail, who retired prior to April 1, 1976, the date of such conveyance, and whose prior service with such a railroad entitled them to such coverage. To pay such amounts ConRail would be entitled to obtain loans from USRA under section 211(h) of the act. Amounts required to provide the coverage would be deemed to be expenses of administration of the estates of the bankrupt railroads.

The Railroad Revitalization and Regulatory Reform Act that was enacted into law in February 1976, added section 211(h) to the Regional Rail Reorganization Act of 1973. Section 211(h) requires ConRail to enter into agency agreements with the various estates of the bankrupt railroads to process, settle, and pay certain outstanding preconveyance obligations of the railroads in reorganization. The U.S. Railroad Association is authorized by section 211(h) to loan ConRail money under certain conditions to make timely payment of the eligible obligations of the estates.

The Rail Transportation Improvement Act enacted in October 1976 amended section 211(h) to add a new category of obligations eligible for loan funding by the Association. The section now authorizes loans for the amounts required to provide adequate funding for payment when due of medical

and life insurance benefits for employees and retirees on account of their service with the railroad in reorganization prior to conveyance date. In order that this type of obligation be eligible for section 211(h) loan funding and payment by ConRail, however, the present law requires that the obligations be determined by the appropriate reorganization court to constitute "administration expenses" of the railroads in reorganization.

The court overseeing the reorganization of the Erie Lackawanna Railroad has determined that the estate has no legal obligation to continue to pay such premiums and that the circumstances of the Erie Lackawanna are such that it should not make such payments voluntarily. The court also ruled that the insurance premiums for life and health insurance benefits do not have status as administration claims. The reorganization court's decision was affirmed by the Court of Appeals for the Sixth Circuit on January 18, 1977. Thus, as section 211(h) now stands, the Association cannot approve loans to fund the payment of premium of health and medical insurance benefitting retired employees of the Erie Lackawanna.

The proposed legislation would amend the appropriate sections of the Rail Act to require that ConRail make premium payments necessary to maintain in effect medical and life insurance benefits to employees and retirees and that ConRail shall be entitled to section 211(h) loans in the amount required for such premium payments. The proposed legislation would also make a statutory determination that the amounts required for such premium payments shall be deemed to be expenses of administration of the estates.

While the Association has no recommedation as to whether the proposed legislation should be enacted, it should be noted that enactment of the bill would insure that the medical and life insurance plans would be continued without risk of interruption or deprivation of the protection now relied on by the employees and retirees. If such new legislation is enacted, the Association would be prepared to approve such loans upon application by ConRail, although it cannot be certain that legal action by the bankrupt estates could not forestall such loans and disrupt the insurance program. After the making of section 211(h) loans to pay the premiums, the burden and risk of the litigation that the premium payments should be paid by the estates would be carried by the Association rather than by the intended beneficiaries of the plans.

There is significant risk that section 211(h) loans under such new legislation could not be recovered from the estates. The practical effect would be that the 211(h) loans for the life and medical payment would become Federal grants which would have to be covered by future appropriations. If the proposed legislation is enacted, the Association will do all in its power to assert the Government's claim against those estates which fail to recognize the claim. There is no

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doubt, however, that the Erie Lackawanna estate, and perhaps others, would litigate the issues raised by the proposed legislation. The Congress may wish to avoid the necessity for such litigation and the possible disruption of the insurance programs by authorizing the Association through appropriated monies directly to fund these programs through ConRail.

Estimated Costs

The Congressional Budget Office has submitted to the committee the estimate on this bill pursuant to section 403 of the Congressional Budget and Impoundment Control Act of 1974. The CBO submission of July 10, 1978, follows:

Congressional Budget Office,
U.S. Congress,
Washington, D.C., July 10, 1978.

Hon. Howard Cannon,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Dirksen Senate Office Building, Washington, D.C.

Dear Mr. Chairman: Pursuant to section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed H.R. 5646, a bill to amend the Regional Rail Reorganization Act of 1973 to require ConRail to make premium payments under certain medical and life insurance policies, to provide that ConRail shall be entitled to a loan extension under section 211(h) of such act in an amount required for such premium payments and to provide that such premium payments shall be deemed to be expenses of administration of the respective railroads in reorganization, as ordered reported by the Senate Committee on Commerce, Science, and Transportation, June 27, 1978.

It is estimated that a substantial portion of the funds expended for continuing insurance coverage will be recovered by ConRail or the U.S. Railway Association succeeding to ConRail's claims against the estates of the respective railroads in reorganization. The Penn Central estate reorganization plan, which constitutes 80 percent of the total loans, virtually assures repayment of such loans. However, the Sixth Circuit, United States Court of Appeals, ruled on the Erie Lackawana settlement that insurance premiums for life and health insurance benefits do not have status as expenses of administration. Thus, there is some risk that not all of the funds loaned for such purposes will be recovered.

It is estimated that a total of approximately $34.4 million will be necessary to fund premium payments with section 211(h) loans, and that ultimately $24.8 million will be recovered. Thus, the net budgetary effect would be a net cash outlay for defaults of $9.6 million.

Should the committee so desire, we would be pleased to provide further details on the estimate.

Sincerely,

Alice M. Rivlin, *Director.*

Regulatory Impact Statement

In compliance with paragraph 5, rule XXIX of the Standing Rules of the Senate, it is hereby stated that the committee anticipates that the bill will have no additional direct regulatory impact. After due consideraion, the committee has determined that the changes in existing law contained in the bill will not increase or diminish any present regulatory responsibilities of the U.S. Railway Association.

Section-by-Section Analysis

The reported bill amends section 303(b)(6) of the Regional Rail Reorganization Act of 1973 to require ConRail to make premium payments necessary for continuation of medical and life insurance coverage for persons who were employed by a railroad whose assets have been conveyed to ConRail, who retired prior to April 1, 1976, the date of such conveyance, and whose prior service with such a railroad entitled them to such coverage. In instances where such coverage has lapsed since April 1, 1976, ConRail shall obtain similar coverage and pay claims for benefits which would have been paid by the insurer but for the lapse of coverage. Amounts required to provide the coverage and benefits are deemed to be expenses of administration of the estates of the bankrupt railroads if the appropriate district court determines that such benefits and coverage were contractual obligations, and to pay such amounts ConRail is entitled to obtain a loan from USRA under section 211(h) of the act.

Changes in Existing Law

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman).

The Regional Rail Reorganization Act of 1973 (45 U.S.C. 701 et seq.) Section 303 of That Act

(a) * * *

(b) Conveyance of Rail Properties.—(1) * * *

* * * * * * *

(6) (*A*) Notwithstanding anything to the contrary contained in this Act or any other provision of law, the special court shall include in its order such further directions as may be necessary to assure [(A)] (*i*) that the operation and administration of the employee pension benefit plans described in section 505(a) of this Act shall be continued, without termination or interruption, by the Corporation until such time as the Corporation elects to amend or terminate any such plan, in whole or in part; and [(B)] (*ii*) that appropriate transfers and assignments with respect to all rights and obligations relating to such plans shall be made to the Corporation for such purposes,

without prejudice to payment of consideration for whatever rights any railroad in reorganization may have in any residual assets under any such employee pension benefit plan. No court shall enter any judgment against the Corporation with respect to any such rights, except that the special court may enter such a judgment in an order issued by it pursuant to subsection (c) of this section, after taking into consideration the rights and obligations transferred pursuant to this paragraph. All liabilities as an employer shall be imposed solely upon the railroad in reorganization in the event such plan is terminated, in whole or in part, by the Corporation within 1 year after the date of such transfer or assignment (except liabilities as an employer under the Employee Retirement Income Security Act of 1974 for benefits accruing during such period), except that in any case in which the Corporation, on or after the date of transfer or assignment as provided by this paragraph, terminates in whole or in part any such plan, the benefits under which are not guaranteed under title IV of the Employee Retirement Income Security Act of 1974, the Corporation shall guarantee the payment when due of the accrued pension benefits provided for thereunder at the time of termination. The Corporation shall be entitled to a loan pursuant to section 211(h) of this Act in an amount required for the adequate funding of accrued pension benefits under all plans transferred or assigned to the Corporation in accordance with this paragraph (whether or not terminated by the Corporation). For purposes of such section 211(h) and notwithstanding any other provision of Federal or State law, amounts required for such adequate funding shall be deemed to be expenses of administration of the respective estates of the railroads in reorganization, due and payable as of the date of transfer or assignment of the plans to the Corporation.

(B) The Corporation shall make such premium payments as may be necessary to maintain in effect any medical or life insurance policy which was maintained by a railroad in reorganization immediately prior to April 1, 1976, and which provides insurance benefits to individuals who retired, prior to April 1, 1976, from service with such a railroad. With respect to any such individual whose medical or life insurance coverage lapsed after April 1, 1976, due to nonpayment of premiums, the Corporation shall—

(i) through the purchase of insurance or otherwise, provide medical or life insurance benefits of the same type and at the same or approximately the same level as were provided by the employer railroad in reorganization and in effect with respect to such individual immediately prior to April 1, 1976; and

(ii) assume and pay any claim for such individual (or his personal representative) for any such insurance benefits, if—

(I) such claim arose during the period beginning April 1, 1976, and ending on the date insurance coverage is provided pursuant to clause (i) of this subparagraph; and

(II) such benefits were not paid by an insurer solely because of the lapse of the insurance coverage during such period.

The Corporation shall be entitled to a loan pursuant to section 211(h) of this Act in an amount required for the payment of insurance premi-

ums and benefits described in this subparagraph. For the purposes of section 211(h), amounts required for such premium payments shall be deemed to be expenses of administration of the respective estates of the railroads in reorganization, due and payable as of April 1, 1976, if the district court having jurisdiction over such railroads in reorganization determines that such premiums and benefits were contractual obligations, or, in the case of a railroad in reorganization which is not subject to a bankruptcy proceeding, such amounts shall be deemed to be obligations of such railroad, due and payable as of such date, and shall be reimbursable in accordance with the procedures set forth in paragraphs (4) and (5) of such section 211(h). As used in this subparagraph, the term 'railroad in reorganization' includes any railroad which is controlled by a railroad in reorganization but is not itself subject to a bankruptcy proceeding, if such railroad conveyed substantially all of its rail properties to the Corporation pursuant to paragraph (1) of this subsection and conducted operations over such rail properties prior to the date of such conveyance.

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Calendar No. 964

95TH CONGRESS
2d Session

SENATE

REPORT
No. 95-1042

TEMPORARY PUBLIC DEBT LIMIT

JULY 27 (legislative day, MAY 17), 1978.—Ordered to be printed

Mr. LONG, from the Committee on Finance, submitted the following

REPORT

[To accompany H.R. 13385]

The Committee on Finance, to which was referred the bill (H.R. 13385) to provide for a temporary increase in the public debt limit, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

I. SUMMARY

The present public debt limit is $752 billion, and the limit is composed of a permanent limit of $400 billion and a temporary limit of $352 billion. The latter expires after July 31, 1978, and the statutory limit will revert to $400 billion on August 1, 1978.

This bill provides for a combined permanent and temporary limit on the public debt of $798 billion for the period through March 31, 1979. The temporary public debt limit will be increased by $398 billion from August 1, 1978, through March 31, 1979.

In addition, the Committee increased by $5 billion, from $27 billion to $32 billion, the authority for the Secretary of the Treasury to issue long-term bonds with interest rates above 4½ percent to the general public.

TABLE 1.—STATUTORY DEBT LIMITATIONS, FISCAL YEARS 1947 TO DATE AND PROPOSED LIMITATION IN FISCAL YEAR 1979

[In billions of dollars]

Fiscal year	Statutory debt limitation		
	Permanent	Temporary additional	Total
1947–54	$275	----------	$275
1955 through Aug. 27	275	----------	275
1955: Aug. 28 through June 30	275	$6	281
1956	275	6	281
1957	275	3	278
1958 through Feb. 25	275	----------	275
1958: Feb. 26 through June 30	275	5	280
1959 through Sept. 1	283	5	288
1959: Sept. 2 through June 29	288	5	290
1959: June 30	285	10	295
1960	285	8	293
1961	285	13	298
1962 through Mar. 12	285	15	300
1962: Mar. 13 through June 30	285	23	308
1963 through Mar. 31	285	20	305
1963: Apr. 1 through May 28	285	22	307
1963: May 29 through June 30	285	24	309
1964 through Nov. 30	285	30	315
1964: Dec. 1 through June 28	285	39	324
1964: June 29 and 30	285	39	324
1965	285	43	328
1966	285	45	330
1967 through Mar. 1	285	51	336
1967: Mar. 2 through June 30	358	----------	358
1968 [1]	358	7	365
1969 through Apr. 6 [1]	358	----------	358
1969 after Apr. 6 [1]	365	12	377
1970 through June 30 [1]	380	15	395
1971 through June 30 [1]	400	50	450
1972 through June 30 [1]	400	50	450
1973 through Oct. 31 [1]	400	65	465
1973 through June 30 [1]	400	65	465
1974 through Nov. 30 [1]	400	75	475
1974: Dec. 3 through June 30 [1]	400	95	495
1975 through Feb. 18 [1]	400	131	531
1975: Feb. 19 through June 30 [1]	400	177	577
1976 through Nov. 15 [1]	400	195	595
1976 through Mar. 15 [1]	400	227	627
1976 through June 30 [1]	400	236	636
TQ: from enactment through Sept. 30, 1971 [1]	400	282	682
1977: from Oct. 1, 1976 through Mar. 31, 1977 [1]	400	300	700
1977: from Apr. 1 through Sept. 30, 1977 [1]	400	352	752
1978: from Oct. 1, 1977, through July 31, 1978 [1]			
Proposed:	400	398	798
From enactment through Mar. 31, 1979 [1]	400	----------	400
After Mar. 31, 1979 [1]			

[1] Includes FNMA participation certificates issued in fiscal year 1968.

II. Increase in the Temporary Limit on the Public Debt

A. PRESENT LAW

The present combined temporary and permanent limitation on th public debt is $752 billion through July 31, 1978. The temporary limi of $352 billion expires after July 31, 1978, and the legal limit wil become $400 billion on August 1, 1978, unless a new temporary limit or an increase in the permanent limit, is enacted.

B. CURRENT ECONOMIC AND BUDGET OUTLOOK

The recovery from the recession has continued at an irregular pac since it began in the second quarter of 1975, as shown in table 2 Quarterly changes in gross national product, expressed in current an

constant (1972) prices, have shown an irregular pattern of rates of increase. Prices have also experienced the same irregular fluctuations since 1975, with the rates of increase in the second quarter of 1978 (10.0 percent) and the second quarter of 1977 (7.7 percent) being the highest since 1975. There was no change in the level of gross national product, in constant prices, in the first quarter of this year which demonstrates the effects of the severe winter on productive activity. In the second quarter, gross national product in constant prices increased at a 7.4 percent annual rate. For the first half of 1978, this amounts to an increase of 3.6 percent for the period.

TABLE 2.—GROSS NATIONAL PRODUCT IN CURRENT AND CONSTANT PRICES AND GNP IMPLICIT PRICE DEFLATOR, QUARTERLY, 1974–78

[Billions of dollars; seasonally adjusted annual rates]

	Gross national product								
	Current dollars			Constant (1972) dollars			Implicit price deflator		
Year and quarter	Total	Difference	Percent change at annual rate	Total	Difference	Percent change at annual rate	Total (index: 1972=100)	Difference (index: 1972=100)	Percent change at annual rate
1974									
1st quarter	$1,369.0		4.2	$1,230.2		−3.9	$111.28		8.4
2d quarter	1,400.1	$31.1	9.4	1,224.5	−5.7	−1.8	114.34	$3.06	11.4
3d quarter	1,430.1	30.0	8.9	1,216.9	−7.6	−2.4	117.52	3.18	11.6
4th quarter	1,452.4	22.3	6.4	1,199.7	−17.2	−5.5	121.06	3.54	12.6
1975									
1st quarter	1,454.7	2.3	.6	1,171.6	−28.1	−9.1	124.16	3.10	10.7
2d quarter	1,498.6	43.9	12.6	1,189.9	18.3	6.4	125.95	1.79	5.9
3d quarter	1,564.0	65.4	18.6	1,220.0	30.1	10.5	128.19	2.24	7.3
4th quarter	1,598.0	34.0	9.0	1,227.9	7.9	2.6	130.14	1.95	6.2
1976									
1st quarter	1,649.7	51.7	13.6	1,255.5	27.6	9.3	131.40	1.26	3.9
2d quarter	1,685.4	35.7	9.0	1,268.0	12.5	4.0	132.92	1.52	4.7
3d quarter	1,715.6	30.2	7.3	1,276.5	8.5	2.7	134.39	1.47	4.5
4th quarter	1,749.8	34.2	8.2	1,284.0	7.5	2.3	136.28	1.89	5.7
1977									
1st quarter	1,806.8	57.0	13.7	1,306.7	22.7	7.3	138.27	1.99	6.0
2d quarter	1,867.0	60.2	14.0	1,325.5	18.8	5.9	140.86	2.59	7.7
3d quarter	1,916.8	49.8	11.1	1,343.9	18.4	5.7	142.63	1.77	5.1
4th quarter	1,958.1	41.3	8.9	1,354.5	10.6	3.2	144.56	1.93	5.5
1978									
1st quarter	1,992.0	33.9	7.1	1,354.2	−.3	−.1	147.10	2.54	7.2
2d quarter	2,076.9	84.9	18.2	1,378.6	24.4	7.4	150.66	3.56	10.0

The unemployment rate fell to 5.9 percent in June. The rate has declined from 7.1 percent in April, May and June in 1977. The decline has been steady throughout these past 15 months, except for 2 minor reversals in the pattern.

Capacity utilization—the rate of current output to productive capacity—increased to 83.6 percent in May, which is the highest rate since October 1974, when the rate was 85.3 percent. There is a widely accepted view that utilization rates above a critical level will lead to the use of relatively inefficient facilities which can operate only at higher costs per unit of output.

C. ADMINISTRATION ESTIMATES

The administration's current estimates of receipts and outlays are shown in table 3. They are the estimates presented to the Committee and published in the Mid-Session Review of the Fiscal Year 1979 Budget on July 6, 1978. Those estimates reflected revisions made in the January budget submission because of a continuing short-fall in outlays, changes in legislative recommendations and a changed economic outlook. The present estimates indicate an expected deficit in the unified budget of $51.1 billion in fiscal year 1978 and of $48.5 billion in fiscal year 1979.

TABLE 3.—ADMINISTRATION ESTIMATES OF UNIFIED BUDGET TOTALS FOR 1978 AND 1979

[Fiscal years; in billions of dollars]

	1977 actual	1978 estimate	1979 estimate
Receipts	$356.9	$401.2	$448.2
Outlays	401.9	452.3	496.6
Deficit (−)	−45.0	−51.1	−48.5

Source: Office of Management and Budget.

Table 4 presents the administration's revised budget totals for fiscal years 1978 and 1979, as estimated by type of budget funds. In both years, the deficits occur in the Federal funds budgets, and the trust funds generate net surpluses.

TABLE 4.—ADMINISTRATION ESTIMATES OF BUDGET RECEIPTS AND OUTLAYS BY FUND GROUP

[Fiscal years; billions of dollars]

	Estimate	
	1978	1979
Receipts:		
Federal funds	$269.4	$298.3
Trust funds	168.4	188.6
Interfund transactions	−36.6	−38.8
Total, budget receipts	401.2	448.2
Outlays:		
Federal funds	332.2	361.4
Trust funds	156.7	174.0
Interfund transactions	−36.6	−38.8
Total, budget outlays	452.3	496.6
Surplus or deficit (−):		
Federal funds	−62.9	−63.1
Trust funds	11.8	14.6
Total, surplus or deficit (−)	−51.1	−48.5

Note: Detail may not add to total due to rounding.

Source: Office of Management and Budget.

TABLE 5.—RELATIONSHIP OF DEFICIT TO PUBLIC DEBT SUBJECT TO LIMIT

[Fiscal years; in billions of dollars]

	Estimates	
	1978	1979
Unified budget deficit	51.1	48.5
Trust funds surplus	11.8	14.6
Federal funds deficit	62.9	63.1
Deficit of off-budget Federal entities	11.0	12.9
Total to be financed	73.9	76.0
Means of financing other than borrowing, and other adjustments	−5.5	3.5
Change in debt subject to limit	68.4	79.5
Debt subject to limit, beginning of year	700.0	768.3
Estimated debt subject to limit, end of year	768.3	847.8

Note: Detail may not add to total due to rounding.

Source: Office of Management and Budget.

The administration estimates that it will need an increase to $851 billion in the debt limit through fiscal year 1979, under the policies and assumptions contained in the President's revised budget. The Federal funds deficit—$63.1 billion in 1979—constitutes the major component in the increased debt limit. Additional debt authority is requested for the Treasury Department to finance the purchase—through the Federal Financing Bank—of debt issues guaranteed by various off-budget agencies. Treasury estimates of debt limit requirements include the assumption that a $15 billion operating cash balance will be maintained and a $3 billion margin for contingencies will be allowed.

The Treasury Department has projected the information in tables 4 and 5 into the public debt requirements through fiscal year 1979 on a monthly basis, which are shown in table 6.

TABLE 6.—ADMINISTRATION END-OF-MONTH PUBLIC DEBT ESTIMATES FOR FISCAL YEARS 1978 AND 1979

[In billions of dollars]

	Operating cash balance	Public debt subject to limit[1]	With $3 billion margin for contingencies
Fiscal year 1978:			
July 31, 1978	$15	$755	$758
Aug. 31	15	766	769
Sept. 30	15	768	771
Fiscal year 1979:			
Oct. 31	15	779	782
Nov. 30	15	791	794
Dec. 31	15	793	796
Jan. 31, 1979	15	794	797
Feb. 28	15	805	808
Mar. 31	15	817	820
Apr. 18	15	821	824
Apr. 30	15	809	812
May 31	15	827	830
June 30	15	821	824
July 31	15	829	832
Aug. 31	15	843	846
Sept. 30	15	848	851

[1] Monthly estimates are consistent with the fiscal year estimates in the "Mid-Session Review of the 1979 Budget" (released July 6, 1978) that the debt subject to limit will be $768.3 billion on Sept. 30, 1978, and $847.8 billion on Sept. 30, 1979.

Source: Treasury Department.

D. BASIS FOR COMMITTEE ACTION

The present debt limit of $752 billion will revert to the permanent limit of $400 billion on August 1, 1978, as the temporary limit of $352 billion expires on July 31, 1978. As shown in tables 4 and 5 above, the requirements for further increases in debt limit authority make it necessary for Congress to act before the end of July. Deficits in the Federal funds budget and deficits in off-budget financing agencies, e.g., the Federal Financing Bank, will have to be financed through issues of new debt. The surplus in the trust funds also requires an increase in the debt limit because trust fund surpluses, by law, must be invested in Federal Government securities; in this respect, a surplus in the trust funds will require an increase in the debt limit unless there is an equal or larger surplus in the Federal funds budget.

End-of-the-month estimates of the public debt subject to limit for fiscal year 1979 fall within the limits established in the first concurrent budget resolution for fiscal year 1979. That limit was set at $849.1 billion, and the Administration presently estimates that it will need a limit of $848 billion through next fiscal year. The Administration's estimate assumes that it will maintain a cash operating balance of $15 billion throughout the fiscal year, which is an increase of $3 billion over the $12 billion cash balance that had been provided for the past several years.

The budget estimates for fiscal year 1979, which provide the basis for the debt limit estimates, involve substantial uncertainty. None of the appropriations bills have been passed by the Congress as yet. Tax and welfare bills have not been passed. The budget estimates, however, are based on the assumption that the President's recommendations, as revised in the July 6, 1978, mid-year review, will be enacted.

The Committee, however, finds it difficult to accept that underlying assumption because of all the uncertainties in the legislative outlook and a slower rate of growth than had been anticipated in gross national product (in constant prices) in the second quarter. These uncertainties indicate that the cautious approach calls for a public debt limit increase just enough to meet projected requirements the first month or so of 1979.

Since the end of fiscal year 1978 coincides with the present target date for adjournment of the 95th Congress and because the legislative calendars of both Houses are overburdened at that time, the Committee decided to provide sufficient debt limit authority to enable the Administration to meet its needs through the early months of 1979. An extension of the debt limit through March 31, 1979, will allow sufficient time for the Congress to organize for the 96th Congress and for the normal legislative process to operate after organization has been completed.

The Committee doubted the need for the higher operating cash balance and accordingly reduced the Administration's projected debt level on March 31, 1979, from $817 billion to $798 billion. Any stringency within that limit which might develop because of unforseen events can be adjusted next year by acting on a public debt limit bill a little earlier than otherwise would be necessary.

III. Exception to Interest Rate Ceiling on Bonds

Present law

Under the Second Liberty Bond Act, the Secretary of the Treasury has the general authority to issue bonds at a rate of interest not to exceed 4¼ percent per year. In the past several years, however, exceptions to the interest ceiling have been enacted which now permit the Secretary to issue up to $27 billion of bonds at interest rates in excess of the ceiling. As a result of the high interest rates prevailing in the long-term market in recent years, it has been possible lately to issue bonds only under the exception from the 4¼ percent interest rate ceiling.

General statement.

Under current statutory authority, the Treasury Department does not have the authority to issue long-term bonds at interest rates above the 4¼ percent ceiling in sufficient quantity to meet the demands estimated in fiscal year 1979. In addition to its desire to retain the position which it has been able to develop the past few years in the long-term market, the Treasury Department desires to have the ability to finance long-term issues because they have helped to reverse the shortening of the average maturity of the Federal debt. (At the end of February, it was 3 months longer than it was 1 year ago: 3 years as compared with 2 years and 9 months.) Lengthening the average maturity of the debt has reduced the average amount of money that must be raised in each refunding.

During the past 3 years, the Committee has been reluctant to encourage a too rapid shift to longer maturities in the public debt structure. While greater Federal participation in the longer maturity market tends to lengthen the average maturity of the public debt in the hands of the public, it also tends to increase the interest rate on long-term bonds. The Committee has increased this authority each year by an amount that was just enough to meet Treasury Department anticipations of the needs for the new fiscal year. The Committee believes that this controlled approach has been successful in recent years, as the behavior of the long-term rates has demonstrated.

The Committee decided to continue this pattern of control and accordingly approved an increase of $5 billion to the exception, raising the amount to $32 billion, which the Treasury Department has testified is sufficient for their plans through March 31, 1979.

IV. Appendix

Table I.—*Debt limitation under sec. 21 of the Second Libery Bond Act as amended—history of legislation*

	In billions
Sept. 24, 1917:	
40 Stat. 288, sec. 1, authorized bonds in the amount of	[1] $7.5
40 Stat. 290, sec. 5, authorized certificates of indebtness outstanding revolving authority	[2] 4.0
Apr. 4, 1918:	
40 Stat. 502, amending sec. 1, increased bond authority to	[1] 12.0
40 Stat. 504, amending sec. 5, increased authority for certificates outstanding to	[2] 8.0
July 9, 1918: 40 Stat. 844, amending sec. 1, increased bond authority to	[2] 20.0

See footnotes at end of table.

TABLE I.—*Debt limitation under sec. 21 of the Second Liberty Bond Act as amended—history of legislation*—Continued

	In billions
Mar. 3, 1919:	
40 Stat. 13, amending sec. 5, increased authority for certificates outstanding to	[2] $10.0
40 Stat. 1309, new sec. 18 added, authorizing notes in the amount of	[1] 7.0
Nov. 23, 1921: 42 Stat. 321 amending sec. 18, increased note authority outstanding (established revolving authority) to	[2] 7.5
June 17, 1929: 46 Stat. 19 amending sec. 5, authorized bills in lieu of certificates of indebtedness; no change in limitation for the outstanding	[2] 10.0
Mar. 3, 1931: 46 Stat. 1506 amending sec. 1, increased bond authority to	[1] 28.0
Jan. 30, 1934: 49 Stat. 343 amending sec. 18, increased authority for notes outstanding to	[1] 10.0
Feb. 4, 1935:	
49 Stat. 20, amending sec. 1, limited bonds outstanding (establishing revolving authority) to	[2] 25.0
49 Stat. 21, new sec. 21 added, consolidating authority for certificates and bills (sec. 5) and authority for notes (sec. 18); same aggregate amount outstanding	[2] 20.0
49 Stat. 21, new sec. 22 added, authorizing U.S. savings bonds within authority of sec. 1.	
May 26, 1938: 52 Stat. 447, amending sec. 1 and 21, consolidating in sec. 21 authority for bonds, certificates of indebtedness, Treasury bills, and notes (outstanding bonds limited to $30,000,000,000). Same aggregate total outstanding	[2] 45.0
July 20, 1939: 53 Stat. 1071, amending sec. 21, removed limitation on bonds without changing total authorized outstanding of bond, certificates of indebtedness, bills and notes	[2] 45.0
June 25, 1940: 54 Stat. 526, amending sec. 31, adding new paragraph: "(b) In addition to the amount authorized by the preceeding paragraph of this section, any obligation authorized by secs. 5 and 18 of this Act, as amended, not to exceed in the aggregate $4,000,000,000 outstanding at any one time, less any retirements made from the special fund made available under sec. 301 of the Revenue Act of 1940, may be issued under said sections to provide the Treasury with funds to meet any expenditures made, after June 30, 1940, for the national defense, or to reimburse the general fund of the Treasury therefor. Any such obligations so issued shall be designated 'National Defense Series' "	[2] 49.0
Feb. 19, 1941: 55 Stat. 7, amending sec. 21, limiting face amount of obligations issued under authority of act outstanding at any one time to	[2] 65.0
Eliminated separated authority for $4,000,000,000 of national defense series obligations.	[2] 125.0
Mar. 28, 1942: 56 Stat. 189, amending sec. 21, increased limitation to	[2] 210.0
April 11, 1943: 57 Stat. 63, amending sec. 21, increased limitation to	[2] 260.0
June 9, 1944: 58 Stat. 272, amending sec. 21, increased limitation to	
Apr. 3, 1945: 59 Stat. 47, amending sec. 21 to read: "The face amount of obligations issued under authority of this act, and the face amount of obligations guaranteed as to principal and interest by the United States (except such guaranteed obligations as may be held by the Secretary of the Treasury), shall not exceed in the aggregate, $300,000,000,000 outstanding at one time"	[2] 300.0
June 26, 1946: 60 Stat. 316, amending sec. 21, adding: "The current redemption value of any obligation issued on a discount basis which is redeemable to maturity at the option of the holder thereof, shall be considered, for the purposes of this section to be the face amount of such obligation," and decreasing limitation of	[2] 27.80
Aug. 28, 1954: 68 Stat. 895, amending sec. 21, effective Aug. 28, 1954, and ending June 30, 1955, increasing temporary limitation by $6,000,000,000 to	[2] 281.0
June 30, 1955: 69 Stat. 241, amending Aug. 28, 1954, act by extending until June 30, 1956, increase in limitation to	[2] 281.0

See footnotes at end of table.

TABLE I.—*Debt limitation under sec. 21 of the Second Liberty Bond Act as amended—history of legislation*—Continued

	In billions
July 9, 1956: 70 Stat. 519, amending act of Aug. 28, 1954, increasing temporary limitation by $3,000,000,000 for period, beginning July 1, 1956, and ending June 30, 1957, to	[2] $278. 0
Effective July 1, 1957, temporary increase terminates and limitation reverts, under act of June 26, 1956, to	[2] 275. 0
Feb. 26, 1958: 72 Stat. 27, amending sec. 21, effective Feb. 26, 1958, and ending June 30, 1959, increasing limitation by $5,000,000,000	[2] 280. 0
Sept. 2, 1958: 72 Stat. 1758, amending sec. 21, increasing limitation by $5,000,000,000	[2] 280. 0
Sept. 2, 1958: 72 Stat. 1758, amending sec. 21, increasing limitation to $283,000,000,000, which with temporary increase of Feb. 26, 1958, makes limitation	[2] 288. 0
June 30, 1959: Stat. 156, amending sec. 21, effective June 30, 1959, increasing limitation to $285,000,000,000, which with temporary increase of Feb. 26, 1958, makes limitation on June 30, 1959	[2] 290. 0
Amending sec. 21, increasing limitation by $10,000,000,000 jfor period beginning July 1, 1959, and ending June 30, 1960, which makes limitation beginning July 3, 1959	[2] 295. 0
July 30, 1960: 74 Stat. 290, amending sec. 21, for period beginning on July 1, 1960, and ending June 30, 1961, temporarily increasing limitation by $8,000,000,000	[2] 293. 0
June 30, 1961: 75 Stat. 148, amending sec. 21, for period beginning on July 1, 1961, and ending June 3, 1972, increasing limitation by $13,000,000,000 to	[2] 298. 0
Mar. 13, 1962: 76 Stat. 23, amending sec. 21, for period beginning on Mar. 13, 1962, and ending June 3, 1962, further increasing limitation by $2,000,000,000	[2] 300. 0
July 1, 1962: 76 Stat. 124 as amended by 77 Stat. 50, amending sec. 21, for period—	
1. Beginning July 1, 1962, and ending Mar. 31, 1963	[2] 308. 0
2. Beginning Apr. 1, 1963, and ending June 24, 1963	305. 0
3. Beginning June 25, 1963, and ending June 30, 1963	[2] 300. 0
May 29, 1963: 77 Stat. 50, amending sec. 21, for period—	
1. Beginning May 29, 1963, and ending June 30, 1963	[2] 307. 0
2. Beginning July 1, 1963, and ending Aug. 31, 1963	[2] 309. 0
Aug. 27, 1963: 77 Stat. 131, amending sec. 21, for the period beginning on Sept. 1, 1963, and ending on Nov. 30, 1963	[2] 309. 0
Nov. 26, 1963: 77 Stat. 342, amending sec. 21, for the period—	
1. Beginning on Dec. 1, 1963, and ending June 29, 1964	[2] 315. 0
2. On June 30, 1964	[2] 309. 0
June 29, 1964: 78 Stat. 225, amending sec. 21, for the period beginning June 29, 1964, and ending June 30, 1965, increasing the temporary debt limit to	[2] 324. 0
June 24, 1965: 79 Stat. 172, amending sec. 21, for the period beginning July 1, 1965, and ending on June 30, 1966, increasing the temporary debt limit to	[2] 328. 0
June 24, 1966: 80 Stat, 21, amending sec. 21, for the period beginning July 1, 1966, and ending on June 30, 1967, increasing the temporary debt limit to	[2] 330. 0
Mar. 2, 1967: 81 Stat. 4, amending sec. 21, for the period beginning Mar. 2, 1967, and ending on June 30, 1967, increasing the temporary debt limit to	[2] 336. 0
June 30, 1967: 81 Stat. 99—	
1. Amending sec. 21, effective June 30, 1967, increasing limitation to	[2] 358. 0
2. Increasing the temporary debt limit by $7.000,000,000 for the period from July 1 to June 29 of each yea., to make the limit for such period	[2] 365. 0
Apr. 7, 1969: 83 Stat. 7—	
1. Amending sec. 21, effective Apr. 7, 1969, increasing debt limitation to	[2] 365. 0

See footnotes at end of table.

TABLE I.—*Debt limitation under sec. 21 of the Second Liberty Bond Act as amended—history of legislation*—Continued

	In billions
2. Increasing the temporary debt limit by $12,000,000,000 for the period from Apr. 7, 1969, through June 30, 1970, to make the limit for such period	[2] $377.0
June 30, 1970: 84 Stat. 368—	
1. Amending sec. 21, effective July 1, 1970, increasing debt limitation to	[2] 380.0
2. Increasing the temporary debt limit by $15,000,000,000 for the period from July 1, 1970, through June 30, 1971, to make the limit for such period	[2] 395.0
Mar. 17, 1971: 85 Stat. 5—	
1. Amending sec. 21, effective Mar. 17, 1971, increasing debt limitation to	[2] 400.0
2. Increasing the temporary debt limit by $30,000,000,000 for the period from Mar. 17, 1971, through June 30, 1972, to make the limit for such period	[2] 400.0
Mar. 15, 1972: 86 Stat. 63, increasing the temporary debt limit by an additional $20,000,000,000 for the period from Mar. 15, 1972, through June 30, 1972, to make the limit for such period	[2] 450.0
July 1, 1972: 86 Stat. 406, extending the temporary debt limit of $50,000,000,000 for the period from July 1 through Oct. 31, 1972, to make the limit for such period	[2] 450.0
Oct. 27, 1972: 86 Stat. 1324, increasing the temporary public debt limit by $65,000,000,000 for the period from Nov. 1, 1972, through June 30, 1973, to make the limit for such period	[2] 465.0
July 1, 1973: 87 Stat. 134, extending the temporary debt limit of $65,000,000,000 for the period from June 30, 1973, through Nov. 30, 1973, to make the limit for such period	[2] 465.0
Dec. 3, 1973: 87 Stat. 691, increasing the temporary debt limit by $75,700,000,000 for the period from Dec. 3, 1973, through June 30, 1974, to make the limit for such period	[2] 475.0
June 30, 1974: 88 Stat. 285, increasing the temporary debt limit by $95,000,000,000 for the period from June 3, 1974, through Mar. 31, 1975, to make the limit for such period	[2] 495.0
Feb. 19, 1975: 89 Stat. 5, increasing the temporary debt limit by $131,000,000,000 for the period from Feb. 10, 1975, through June 30, 1976, to make the limit for such period	[2] 531.0
June 30, 1975: 89 Stat. 246, increasing the temporary debt limit by $177,000,000,000 for the period from June 30, 1975, through Nov. 15, 1975, to make the limit for such period	[2] 577.0
Nov. 14, 1975: 89 Stat. 693, increasing the temporary debt limit by $195,000,000,000 for the period from Nov. 14, 1975, through Mar. 15, 1975, to make the limit for such period	[2] 595.0
Mar. 15, 1976: 90 Stat. 217, increasing the temporary debt limit by $277,000,000,000 for the period from Mar. 15, 1976, through June 30, 1976, to make the limit for such period	[2] 627.0
June 30, 1976: 90 Stat. 793—	
1. Increasing the temporary debt limit by $236,000,000,000 for the period from July 1, 1967, through Sept. 30, 1976, to make the limit for such period	[2] 636.0
2. Increasing the temporary debt limit by $282,000,000,000 for the period from Oct. 1, 1976, through Mar. 3, 1977, to make the limit for such period	[2] 682.0
3. Increasing the temporary debt limit by $300,000,000,000 for the period from Apr. 1, 1977, through Sept. 30, 1977, to make the limit for such period	[2] 700.0
Oct. 4, 1977: 91 Stat. 1090, increasing the temporary debt limit by $352,000,000,000 for the period from the date of enactment through Mar. 31, 1978, to make the limit for such period	[2] 752.0
Mar. 27, 1978: 22 Stat. 185, extending the temporary debt limit of $352,000,000,000 from the date of enactment through July 31, 1978, to make the limit for such period	[2] 752.0

[1] Limitation on issue.
[2] Limitation on outstanding.

TABLE II.—*Public debt subject to limitation at end of fiscal years 1916–77 and on June 30, 1978*

Fiscal year	Millions	Fiscal year	Millions
1916	$1,225	1948	$250,381
1917	2,976	1949	250,965
1918	12,455	1950	255,382
1919	25,485	1951	253,283
1920	24,299	1952	257,233
1921	23,977	1953	264,200
1922	22,963	1954	269,379
1923	22,350	1955	272,348
1924	21,251	1956	270,619
1925	20,516	1957	269,120
1926	19,643	1958	275,395
1927	18,512	1959	282,419
1928	17,604	1960	283,827
1929	16,931	1961	286,308
1930	16,185	1962	296,374
1931	16,801	1963	302,923
1932	19,487	1964	308,583
1933	22,539	1965	314,126
1934	27,053	1966	316,293
1935	28,701	1967	323,143
1936	33,779	1968	[1] 348,534
1937	36,425	1969	[1] 356,107
1938	36,882	1970	[1] 372,600
1939	40,371	1971	[1] 398,650
1940	43,219	1972	[1] 427,751
1941	49,494	1973	[1] 458,264
1942	74,154	1974	[2] 475,181
1943	140,469	1975	[1] 534,207
1944	208,077	1976	[1] 621,556
1945	268,671	Transition quarter	[1] 635,822
1946	268,932	1977	[1] 699,963
1947	255,767	1978 [2]	[1] 750,175

[1] Includes FNMA participation certificates issued in fiscal year 1968 in debt of fiscal years 1968–78.
[2] Debt at close of business June 30, 1978.

Source: Annual Report of the Secretary of the Treasury for fiscal year 1942, table 34, p. 544, for 1916–37; Annual Report for fiscal year 1962, table 1, 507, for 1938 and 1939; Annual Report for fiscal year 1976, Statistical Appendix, table 21, p. 67, for 1940-76; Treasury Bulletin, April 1978, table FD–8, p. 24, for 1977, and daily Treasury statement for June 30, 1978.

Appendix tables III through XI, which follow, provide historical comparisons of the levels of debt incurred by individuals and corporations in the private sector and by Federal, State, and local governments in the public sector. The tables show gross and net debt in total and in per capita amounts and their relationship to gross national product (tables III, IV, and V for gross debt and tables VI, VII, and VIII for net debt). Table IX relates Federal debt to population and prices. Table X relates privately held Federal debt to GNP, and table XI shows annual changes in per capita GNP.

Generally, the levels of Federal debt have declined relatively to total amounts of private and public debt. The percentages of Federal debt to total gross or net debt have declined since World War II peaks reached in 1945 or 1946. Low ratios were reached in 1974 and have increased somewhat since then. Nevertheless, the 1976 ratios are about equal to the same ratios for 1934 or 1935.

TABLE III.—ESTIMATED GROSS GOVERNMENT AND PRIVATE DEBT, BY MAJOR CATEGORIES

[Dollar amounts in billions]

Year	Private [1]			State and local	Federal [2]			Total gross debt	Percent Federal of total
	Individual	Corporate	Total		Public	Agency	Total		
1929	$72.9	$107.0	$179.9	$17.8	$16.3	$1.2	$17.5	$215.2	8.2
1930	72.8	107.4	179.2	18.9	16.0	1.3	17.3	215.4	8.1
1931	64.9	100.3	165.2	19.5	17.8	1.3	19.1	203.8	9.4
1932	57.1	96.1	153.2	19.7	20.8	1.2	22.0	194.9	11.3
1933	51.0	92.4	143.4	19.5	23.8	1.5	25.3	188.2	13.5
1934	49.8	90.6	140.4	19.2	28.5	4.8	33.3	192.9	17.3
1935	49.7	89.8	139.5	19.6	30.6	5.6	36.2	195.3	18.6
1936	50.6	90.9	141.5	19.6	34.4	5.9	40.3	201.4	20.1
1937	51.1	90.2	141.3	19.6	37.3	5.8	43.1	204.0	21.2
1938	50.0	86.8	136.8	19.8	39.4	6.2	45.6	202.2	22.6
1939	50.8	86.8	137.6	20.1	41.9	6.9	48.8	206.5	23.7
1940	53.0	89.0	142.0	20.2	45.0	7.2	52.2	214.4	24.4
1941	55.6	97.5	153.1	20.0	57.9	7.7	65.6	238.7	27.5
1942	49.9	106.3	156.2	19.2	108.2	5.5	113.7	289.1	39.4
1943	48.8	110.3	159.1	18.1	165.9	5.1	171.0	348.2	49.2
1944	50.7	109.0	159.7	17.1	230.6	3.0	233.6	410.4	57.0
1945	54.7	99.5	154.2	16.0	278.1	1.5	279.6	449.8	62.2
1946	59.9	108.3	169.2	16.1	258.9	1.5	260.4	445.7	58.5
1947	69.4	128.9	198.3	17.5	255.4	.7	256.1	471.9	54.3
1948	80.6	139.4	220.0	19.6	251.6	1.0	252.6	492.2	51.4
1949	90.4	140.3	230.7	22.2	256.1	.8	256.9	509.8	50.4
1950	104.3	167.7	272.0	25.3	255.4	1.1	256.5	553.8	46.4
1951	114.3	191.9	306.2	28.0	258.1	.8	258.9	593.1	43.7
1952	129.4	202.9	332.3	31.0	266.2	.8	267.0	630.3	42.4
1953	143.2	212.9	356.1	35.0	273.8	.9	274.7	665.8	41.3
1954	157.2	217.6	374.8	40.2	277.2	.8	278.0	693.0	40.2
1955	180.1	253.9	434.0	46.3	279.1	1.5	280.6	760.9	36.9
1956	195.5	277.3	402.2	50.1	275.5	1.7	277.2	800.1	34.7
1957	207.6	295.8	503.4	54.7	274.2	3.2	277.4	835.5	33.3
1958	222.9	312.0	534.9	60.4	282.2	2.3	284.5	879.8	32.4
1959	245.0	341.4	586.4	66.6	288.7	5.7	294.4	947.4	31.1
1960	263.3	365.1	628.4	72.0	287.7	6.4	294.1	994.5	29.9
1961	284.8	391.5	676.3	77.6	293.6	6.9	300.5	1,054.4	28.5
1962	311.9	421.5	733.4	83.4	300.2	7.8	308.0	1,124.8	27.4
1963	345.8	457.1	802.9	89.5	306.0	8.1	314.1	1,206.5	26.0
1964	380.0	497.3	877.4	95.5	314.3	9.1	323.4	1,296.3	24.9
1965	424.6	551.9	976.5	103.1	317.2	9.8	326.9	1,406.5	23.2
1966	454.7	617.4	1,072.1	109.3	325.6	14.0	339.6	1,521.1	22.3
1967	489.1	672.9	1,162.0	117.3	341.8	20.1	361.9	1,641.0	22.2
1968	529.3	779.1	1,308.4	127.2	356.2	15.1	371.3	1,806.9	20.5
1969	566.2	912.7	1,478.9	137.9	367.4	13.8	381.2	1,997.9	19.1
1970	600.0	997.9	1,597.9	149.2	388.3	12.5	400.8	2,147.8	18.7
1971	667.5	1,087.8	1,755.3	167.0	423.4	11.0	434.4	2,356.6	18.4
1972	763.9	1,214.3	1,978.2	181.2	448.4	11.8	460.2	2,620.7	17.6
1973	854.4	1,390.5	2,244.9	196.1	469.1	11.6	480.7	2,921.7	16.5
1974	922.1	1,546.4	2,468.5	214.7	492.7	11.3	504.0	3,187.2	15.8
1975	994.4	1,626.1	2,620.5	229.6	576.7	10.9	587.6	3,437.7	17.1
1976	1,106.8	1,781.7	2,888.5	246.4	653.5	11.3	664.8	3,799.7	17.5
1977					718.9	10.2	729.2		

[1] Private corporate debt includes the debt of certain federally sponsored agencies in which there is no longer any Federal proprietary interest. The debt of the following agencies are included beginning these years: FLB's in 1949; FHLB's in 1951; FNMA-secondary market operations, FICB's and BCOOP's in 1968. The total debt for these agencies amounted to $0.7 billion on Dec. 31, 1947, $3.5 billion on Dec. 31, 1960, $38.8 billion on Dec. 31, 1970, $78.8 billion on Dec. 31, 1975, and $81.4 billion on Dec. 31, 1976.

[2] Total Federal securities includes public debt securities and budget agency securities.

Note: Detail may not add to totals because of rounding. Real GNP is in constant 1972 dollars. Real per capital debt expressed in 1967 prices (i.e., Consumer Price Index for all items).

Source: Federal debt, Treasury Department; other data, Bureau of Economic Analysis, Commerce Department.

TABLE IV.—ESTIMATED PER CAPITA GROSS GOVERNMENT AND PRIVATE DEBT[1]

[Amounts in dollars]

Year	Private[2]			State and local	Federal[3]			Total gross debt
	Individual	Corporate	Total		Public	Agency	Total	
1929	$599	$879	$1,477	$146	$134	$10	$144	$1,767
1930	583	873	1,456	154	130	11	141	1,750
1931	523	809	1,332	157	144	10	154	1,643
1932	457	770	1,227	158	167	10	176	1,561
1933	406	736	1,142	155	190	12	201	1,499
1934	394	717	1,111	152	226	38	264	1,526
1935	391	706	1,096	154	240	44	284	1,535
1936	395	710	1,105	153	269	46	315	1,573
1937	397	700	1,097	152	290	45	335	1,584
1938	385	669	1,054	153	303	48	351	1,557
1939	388	663	1,051	154	320	53	373	1,578
1940	400	671	1,071	152	339	54	394	1,617
1941	415	728	1,143	149	432	58	490	1,783
1942	369	785	1,154	142	799	41	840	2,136
1943	356	804	1,159	132	1,209	37	1,246	2,537
1944	365	785	1,150	123	1,660	22	1,682	2,954
1945	389	708	1,098	114	1,980	11	1,990	3,202
1946	422	770	1,192	113	1,824	11	1,835	3,140
1947	480	891	1,370	121	1,765	5	1,770	3,261
1948	548	947	1,494	133	1,709	7	1,716	3,344
1949	604	937	1,540	148	1,710	5	1,715	3,404
1950	685	1,101	1,786	166	1,677	7	1,684	3,637
1951	738	1,239	1,977	181	1,666	5	1,672	3,829
1952	821	1,288	2,109	197	1,690	5	1,695	4,001
1953	894	1,329	2,223	218	1,709	6	1,715	4,156
1954	964	1,335	2,299	247	1,700	5	1,705	4,251
1955	1,085	1,530	2,616	279	1,682	9	1,691	4,586
1956	1,157	1,642	2,799	297	1,631	10	1,641	4,737
1957	1,207	1,720	2,927	318	1,594	19	1,613	4,858
1958	1,275	1,784	3,059	345	1,614	13	1,627	5,031
1959	1,378	1,920	3,298	375	1,623	32	1,656	5,328
1960	1,457	2,021	3,478	399	1,592	35	1,628	5,504
1961	1,550	2,131	3,682	422	1,598	38	1,636	5,740
1962	1,672	2,260	3,932	447	1,609	42	1,651	6,030
1963	1,827	2,415	4,243	473	1,617	43	1,660	6,375
1964	1,981	2,592	4,572	498	1,638	47	1,685	6,755
1965	2,185	2,840	5,026	531	1,633	50	1,682	7,239
1966	2,313	3,141	5,454	557	1,656	71	1,728	7,739
1967	2,461	3,386	5,848	590	1,720	101	1,821	8,258
1968	2,637	3,882	6,519	634	1,775	75	1,850	9,003
1969	2,794	4,503	7,297	680	1,813	68	1,881	9,858
1970	2,929	4,871	7,799	728	1,895	61	1,956	10,483
1971	3,224	5,254	8,478	807	2,045	53	2,098	11,382
1972	3,658	5,814	9,472	868	2,147	56	2,203	12,548
1973	4,061	6,609	10,669	932	2,229	55	2,285	13,886
1974	4,352	7,298	11,649	1,013	2,325	53	2,379	15,041
1975	4,657	7,615	12,272	1,075	2,701	51	2,752	16,099
1976	5,145	8,282	13,428	1,145	3,038	53	3,090	17,663
1977					3,316	47	3,364	

[1] Per capita debt is calculated by dividing debt figures by population of conterminous United States. Beginning 1949, population includes Armed Forces overseas, Hawaii and Alaska.

[2] Private corporate debt includes the debt of certain federally sponsored agencies in which there is no longer any Federal proprietary interest. The debt of the following agencies are included beginning these years: FLB 's in 1949; FHLB's in 1951; FNMA-secondary market operations, FICB's and BCOOP's in 1968. The total debt for these agencies amounted to $0.7 billion on Dec. 31, 1947, $3.5 billion on Dec. 31, 1960, $38.8 billion on Dec. 31, 1970, $78.8 billion on Dec. 31, 1975, and $81.4 billion on Dec. 31, 1976.

[3] Total Federal securities includes public debt securities and budget agency securities.

Note: Detail may not add to totals because of rounding. Real GNP is in constant 1972 dollars. Real per capita debt expressed in 1967 prices (i.e., Consumer Price Index for all items).

Source: Federal debt, Treasury Department; other data, Bureau of Economic Analysis, Commerce Department.

TABLE V.—GROSS GOVERNMENT AND PRIVATE DEBT RELATED TO GROSS NATIONAL PRODUCT

Year	Gross national product (billions)	Ratios of debt to gross national product							
		Private[1]			State and local	Federal[2]			Total gross debt
		Individual	Corporate	Total		Public	Agency	Total	
1929	$103.4	70.5	103.5	174.0	17.3	15.8	1.2	17.0	208.1
1930	90.7	79.2	118.5	197.6	20.9	17.7	1.5	19.1	237.5
1931	76.1	85.4	131.9	217.2	25.7	23.4	1.8	25.2	268.0
1932	58.3	98.0	164.9	262.9	33.9	35.7	2.1	37.8	334.5
1933	55.8	91.4	165.6	257.0	35.0	42.7	2.7	45.4	337.2
1934	65.3	76.3	138.8	215.1	29.5	43.7	7.4	51.1	295.5
1935	72.5	68.6	123.9	192.5	27.1	42.3	7.8	50.0	269.5
1936	82.7	61.2	109.9	171.1	23.7	41.6	7.2	48.8	243.5
1937	96.7	52.9	93.3	146.1	20.3	38.6	6.0	44.6	210.9
1938	85.0	58.9	102.2	161.1	23.4	45.4	7.3	53.7	238.0
1939	90.8	56.0	95.6	151.6	22.2	46.2	7.6	53.8	227.5
1940	100.0	53.1	89.1	142.1	20.3	45.1	7.3	52.3	214.5
1941	124.9	44.6	78.1	122.6	16.1	46.4	6.2	52.6	191.2
1942	158.3	31.6	67.2	98.7	12.2	69.4	3.5	71.9	182.7
1943	192.0	25.5	57.5	82.9	9.5	76.5	2.7	89.1	181.4
1944	210.5	24.1	51.8	75.9	8.2	109.6	1.5	111.0	195.0
1945	212.3	25.8	46.9	72.7	7.6	131.0	.8	131.7	211.9
1946	209.6	28.6	52.2	80.8	7.7	123.6	.8	124.3	212.7
1947	232.8	29.9	55.4	85.2	7.6	109.8	.4	110.1	202.8
1948	259.1	31.2	53.9	85.0	7.6	97.2	.4	97.5	190.0
1949	258.0	35.1	54.4	89.5	8.7	99.3	.4	99.6	197.6
1950	286.2	36.5	58.6	95.1	8.9	89.3	.4	89.7	193.6
1951	330.2	34.7	58.2	92.8	8.5	78.2	.3	78.5	179.7
1952	347.2	37.2	58.5	95.8	9.0	76.7	.3	77.0	181.6
1953	366.1	39.2	58.2	97.3	9.6	74.8	.3	75.1	181.9
1954	366.3	43.0	59.5	102.4	11.0	75.7	.3	75.9	189.2
1955	399.3	45.2	63.6	108.7	11.6	69.9	.4	70.3	190.6
1956	420.7	46.5	66.0	112.4	12.0	65.5	.5	65.9	190.2
1957	442.8	46.9	66.9	113.7	12.4	62.0	.8	62.7	188.7
1958	448.9	49.7	69.6	119.2	13.5	62.9	.6	63.4	196.0
1959	486.5	50.4	70.2	120.6	13.7	59.4	1.2	60.6	194.8
1960	506.0	52.1	72.2	124.2	14.3	56.9	1.3	58.2	196.6
1961	523.3	54.5	74.9	129.3	14.9	56.2	1.4	57.5	201.5
1962	563.8	55.4	74.8	130.1	14.8	53.3	1.4	54.7	199.6
1963	594.7	58.2	76.9	135.1	15.1	51.5	1.4	52.9	202.9
1964	635.7	59.8	78.3	138.1	15.1	49.5	1.5	50.9	204.0
1965	688.1	61.7	80.2	142.0	15.0	46.1	1.5	47.5	204.4
1966	753.0	60.4	82.0	142.4	14.5	43.2	1.9	45.1	202.0
1967	796.3	61.4	84.5	145.9	14.7	42.9	2.5	45.4	206.1
1968	868.5	60.9	89.7	150.7	14.6	41.0	1.7	42.8	208.0
1969	935.5	60.5	97.6	158.1	14.7	39.3	1.5	40.7	213.6
1970	982.4	61.1	101.6	162.7	15.2	39.5	1.3	40.8	218.6
1971	1,063.4	62.8	102.3	165.1	15.7	39.8	1.0	40.9	221.6
1972	1,171.1	65.3	103.7	168.9	15.5	38.3	1.0	39.3	223.8
1973	1,306.3	65.4	106.4	171.9	15.0	35.9	.9	36.8	223.7
1974	1,412.9	65.3	109.4	174.7	15.2	34.9	.8	35.7	225.5
1975	1,528.8	65.0	106.4	171.4	15.0	37.7	.7	38.4	224.9
1976	1,706.5	64.9	104.4	169.3	16.9	38.3	.7	39.0	222.7
1977	1,890.4					38.0	.5	38.6	

[1] Private corporate debt includes the debt of certain federally sponsored agencies in which there is no longer any Federal proprietary interest. The debt of the following agencies are included beginning these years: FLB's in 1949; FHLB's in 1951; FNMA-secondary market operations, FICB's and BCOOP's in 1968. The total debt for these agencies amounted to $0.7 billion on Dec. 31, 1947, $3.5 billion on Dec. 31, 1960, $38.8 billion on Dec. 31, 1970, $78.8 billion on Dec. 31, 1975, and $81.4 billion on Dec. 31, 1976.

[2] Total Federal securities includes public debt securities and budget agency securities.

Note: Detail may not add to totals because of rounding. Real GNP is in constant 1972 dollars. Real per capita debt expressed in 1967 prices (i.e., Consumer Price Index for all items).

Source: Federal debt, Treasury Department; other data, Bureau of Economic Analysis, Commerce Department.

TABLE VI.—ESTIMATED NET GOVERNMENT AND PRIVATE DEBT BY MAJOR CATEGORIES

[Dollar amounts in billions]

Year	Private [1]			State and local	Federal [2]	Total net debt	Percent Federal of total
	Individual	Corporate	Total				
1916	$36.3	$40.2	$76.5	$4.5	$1.2	$82.2	1.5
1917	38.7	43.7	82.4	4.8	7.3	94.5	7.8
1918	44.5	47.0	91.5	5.1	20.9	117.5	17.8
1919	43.9	53.3	97.2	5.5	25.6	128.3	20.0
1920	48.1	57.7	105.8	6.2	23.7	135.7	17.5
1921	49.2	57.0	106.2	7.0	23.1	136.3	17.0
1922	50.9	58.6	109.5	7.9	22.8	140.2	16.3
1923	53.7	62.6	116.3	8.6	21.8	146.7	14.9
1924	55.8	67.2	123.0	9.4	21.0	153.4	13.7
1925	59.6	72.7	132.3	10.3	20.3	162.9	12.5
1926	62.7	76.2	138.9	11.1	19.2	169.2	11.4
1927	66.4	81.2	147.6	12.1	18.2	177.9	10.3
1928	70.0	86.1	156.1	12.7	17.5	186.3	9.4
1929	72.9	88.9	161.8	13.6	16.5	191.9	8.6
1930	71.8	89.3	161.1	14.7	16.5	192.3	8.6
1931	64.9	83.5	148.4	16.0	18.5	182.9	10.2
1932	57.1	80.0	137.1	16.6	21.3	176.0	12.2
1933	51.0	76.9	127.9	16.3	24.3	168.5	14.5
1934	49.8	75.5	125.3	15.9	30.4	171.6	17.8
1935	49.7	74.8	124.5	16.1	34.4	175.0	19.7
1936	50.6	76.1	126.7	16.2	37.7	180.6	20.9
1937	51.1	75.8	126.9	16.1	39.2	182.2	21.6
1938	50.0	73.3	123.3	16.1	40.5	179.9	22.6
1939	50.8	73.5	124.3	16.4	42.6	183.3	23.3
1940	53.0	75.6	128.6	16.4	44.8	189.8	23.7
1941	55.6	83.4	139.0	16.1	56.3	211.4	26.7
1942	49.9	91.6	141.5	15.4	101.7	258.6	39.4
1943	48.8	95.5	144.3	14.5	154.4	313.2	49.3
1944	50.7	94.1	144.8	13.9	211.9	370.6	57.2
1945	54.7	85.3	140.0	13.4	252.5	405.9	62.3
1946	59.9	93.5	153.4	13.7	229.5	396.6	57.9
1947	69.4	109.6	179.0	15.0	221.7	415.7	53.4
1948	80.6	118.4	199.0	17.0	215.3	431.3	50.0
1949	90.4	118.7	209.1	19.1	217.6	445.8	48.9
1950	104.3	142.8	247.1	21.7	217.4	486.2	44.8
1951	114.3	163.8	278.1	24.2	216.9	519.2	41.8
1952	129.4	172.3	301.7	27.0	221.5	550.2	40.3
1953	143.2	180.9	324.1	30.7	226.8	581.6	39.0
1954	157.2	184.1	341.3	35.5	229.1	605.9	37.9
1955	180.1	215.0	395.1	41.1	229.6	665.8	34.5
1956	195.5	234.1	429.6	44.5	224.3	698.4	32.2
1957	207.6	249.1	456.7	48.6	223.0	728.3	30.7
1958	222.9	262.0	484.9	53.7	231.0	769.6	30.1
1959	245.0	287.0	532.0	59.6	241.4	833.0	29.0
1960	263.3	306.3	569.6	64.9	239.8	874.3	27.5
1961	284.8	328.3	613.1	70.5	246.7	930.3	26.6
1962	311.9	353.5	665.4	77.0	253.6	996.0	25.5
1963	345.8	383.6	729.4	83.9	257.5	1,070.8	24.1
1964	380.1	417.1	797.2	90.4	264.0	1,151.6	23.0
1965	424.6	463.2	887.8	98.3	266.4	1,252.5	21.3
1966	454.7	517.8	972.5	104.7	271.8	1,349.1	20.1
1967	489.1	562.6	1,051.7	112.8	286.4	1,450.8	19.7
1968	529.3	653.0	1,182.3	122.7	291.9	1,596.8	18.3
1969	566.2	764.7	1,330.9	133.3	289.3	1,753.4	16.5
1970	600.0	836.1	1,436.1	144.8	301.1	1,881.9	16.0
1971	667.5	911.2	1,578.7	162.7	325.9	2,067.3	15.8
1972	763.9	1,016.7	1,780.6	178.0	341.2	2,299.8	14.8
1973	854.4	1,166.5	2,020.9	192.3	349.1	2,562.3	13.6
1974	922.1	1,299.4	2,221.5	211.2	360.8	2,793.5	12.9
1975	994.4	1,365.4	2,359.8	222.7	446.7	3,028.8	14.7
1976	1,016.8	1,496.1	2,602.9	236.3	515.8	3,354.9	15.4
1977					572.5		

[1] Private corporate debt includes the debt of certain federally sponsored agencies in which there is no longer any Federal proprietary interest. The debt of the following agencies are included beginning these years: FLB's in 1949; FHLB's in 1951; FNMA-secondary market operations, FICB's, and BCOOP's in 1968. The total debt for these agencies amounted to $0.7 billion on Dec. 31, 1947, $3.5 billion on Dec. 31, 1960, $38.8 billion on Dec. 31, 1970, $78.8 billion on Dec. 31, 1975, and $81.4 billion on Dec. 31, 1976.

[2] Borrowing from the public equals gross Federal debt less securities held in Government accounts (a unified budget concept).

Note: Detail may not add to totals because of rounding. Real GNP is in constant 1972 dollars. Real per capita debt expressed in 1967 prices (i.e., Consumer Price Index for all items).

Source: Federal debt, Treasury Deprtment; other data, Bureau of Economic Analysis, Commerce Department.

TABLE VII.—ESTIMATED PER CAPITA NET GOVERNMENT AND PRIVATE DEBT[1]

[Amounts in dollars]

Year	Private[2]			State and local	Federal[3]	Total net debt
	Individual	Corporate	Total			
1916	356	394	750	44	12	806
1917	375	423	798	46	71	915
1918	431	455	887	49	203	1,139
1919	420	510	930	53	245	1,228
1920	452	542	994	58	223	1,275
1921	453	525	978	64	213	1,256
1922	462	532	995	72	207	1,274
1923	480	559	1,039	77	195	1,310
1924	489	589	1,078	82	184	1,344
1925	515	628	1,142	89	175	1,406
1926	534	649	1,183	95	164	1,441
1927	558	682	1,240	102	153	1,494
1928	581	715	1,295	105	145	1,546
1929	599	730	1,329	112	136	1,576
1930	583	726	1,309	119	134	1,562
1931	523	673	1,196	129	149	1,475
1932	457	641	1,098	133	171	1,402
1933	406	612	1,018	130	194	1,342
1934	394	597	992	126	241	1,359
1935	391	588	978	127	270	1,375
1936	395	594	989	127	294	1,410
1937	397	588	985	125	304	1,414
1938	385	565	950	124	312	1,386
1939	388	562	950	125	325	1,401
1940	400	570	970	124	338	1,431
1941	415	623	1,038	120	420	1,579
1942	369	677	1,045	114	751	1,910
1943	356	696	1,051	106	1,125	2,282
1944	365	677	1,042	100	1,525	2,668
1945	389	607	997	95	1,798	2,890
1946	422	659	1,081	97	1,617	2,794
1947	480	757	1,237	104	1,532	2,873
1948	548	804	1,352	115	1,463	2,930
1949	604	793	1,396	128	1,453	2,977
1950	685	938	1,623	143	1,428	3,193
1951	738	1,058	1,796	156	1,400	3,352
1952	821	1,094	1,915	171	1,406	3,492
1953	894	1,129	2,023	192	1,416	3,631
1954	964	1,129	2,094	218	1,405	3,717
1955	1,085	1,296	2,381	248	1,384	4,013
1956	1,157	1,386	2,543	263	1,328	4,135
1957	1,207	1,448	2,655	283	1,297	4,235
1958	1,275	1,498	2,773	307	1,321	4,401
1959	1,378	1,614	2,992	335	1,357	4,684
1960	1,457	1,695	3,153	359	1,327	4,839
1961	1,550	1,787	3,338	384	1,343	5,064
1962	1,672	1,895	3,567	413	1,360	5,339
1963	1,827	2,027	3,854	443	1,361	5,658
1964	1,981	2,174	4,154	471	1,376	6,001
1965	2,185	2,384	4,569	506	1,371	6,446
1966	2,313	2,634	4,948	533	1,383	6,864
1967	2,461	2,831	5,293	568	1,441	7,301
1968	2,637	3,254	5,891	611	1,454	7,956
1969	2,794	3,773	6,567	658	1,427	8,651
1970	2,929	4,081	7,010	707	1,470	9,185
1971	3,224	4,401	7,625	786	1,574	9,984
1972	3,658	4,868	8,526	852	1,634	11,012
1973	4,061	5,544	9,605	914	1,659	12,178
1974	4,352	6,132	10,484	997	1,703	13,183
1975	4,693	6,444	11,136	1,051	2,090	14,293
1976	5,145	6,955	12,100	1,098	2,398	15,596
1977					2,641	

[1] Per capita debt is calculated by dividing debt figures by population of conterminous United States. Beginning 1940, population includes Armed Forces overseas, Hawaii, and Alaska.

[2] Private corporate debt includes the debt of certain federally sponsored agencies in which there is no longer any Federal proprietary interest. The debt of the following agencies are included beginning these years: FLB's in 1949; FHLB's in 1951; FNMA-secondary market operations, FICB's and BCOOP's in 1968. The total debt for these agencies amounted to $0.7 billion on Dec. 31, 1947, $3.5 billion on Dec. 31, 1960, $38.8 billion on Dec. 31, 1970, $78.8 billion on Dec. 31, 1975, and $81.4 billion on Dec. 31, 1976.

[3] Borrowing from the public equals gross Federal debt less securities held in Government accounts (a unified budget concept).

Note: Detail may not add to totals because of rounding. Real GNP is in constant 1972 dollars. Real per capita debt expressed in 1967 prices (i.e., Consumer Price Index for all items).

Source: Federal debt, Treasury Department; other data, Bureau of Economic Analysis, Commerce Department.

TABLE VIII.—NET GOVERNMENT AND PRIVATE DEBT RELATED TO GROSS NATIONAL PRODUCT

Year	Gross national product (billions)	Ratios of debt to gross national product					
		Private[1]			State and local	Federal[2]	Total net debt
		Individual	Corporate	Total			
1929	$103.4	$70.5	$86.0	$156.5	$13.2	$16.0	$185.6
1930	90.7	79.2	98.5	177.7	16.3	18.2	212.1
1931	76.1	85.4	109.8	195.1	21.1	24.4	240.5
1932	58.3	98.0	137.3	235.3	28.5	36.6	300.3
1933	55.8	91.4	137.8	229.2	29.3	43.6	301.9
1934	65.3	76.3	115.7	192.0	24.4	46.6	262.9
1935	72.5	68.6	103.2	171.8	22.3	47.5	241.4
1936	82.7	61.2	92.0	153.2	19.6	45.6	218.3
1937	96.7	52.9	78.4	131.2	16.7	40.6	188.4
1938	85.0	58.9	86.3	145.2	19.0	47.7	211.8
1939	90.8	56.0	81.0	136.9	18.1	47.0	201.9
1940	100.0	53.1	75.7	128.7	16.5	44.9	189.9
1941	124.9	44.6	66.8	111.4	12.9	45.1	169.3
1942	158.3	31.6	57.9	89.4	9.8	64.3	163.4
1943	192.0	25.5	49.8	75.2	7.6	80.5	163.2
1944	210.5	24.1	44.8	68.8	6.7	100.7	176.1
1945	212.3	25.8	40.2	66.0	6.4	119.0	191.2
1946	209.6	28.6	44.7	73.2	6.6	109.5	189.3
1947	232.8	29.9	47.1	76.9	6.5	95.3	178.6
1948	259.1	31.2	45.7	76.9	6.6	83.1	166.5
1949	258.0	35.1	46.1	81.1	7.5	84.4	172.8
1950	286.2	36.5	49.9	86.4	7.6	76.0	169.9
1951	330.2	34.7	49.7	84.3	7.4	65.7	157.3
1952	347.2	37.3	49.7	86.9	7.8	63.8	158.5
1953	366.1	39.2	49.5	88.6	8.4	62.0	158.9
1954	366.3	43.0	50.3	93.2	9.7	62.6	165.5
1955	399.3	45.2	53.9	99.0	10.3	57.6	166.8
1956	420.7	46.5	55.7	102.2	10.6	53.4	166.1
1957	442.8	46.9	56.3	103.2	11.0	50.4	164.5
1958	448.9	49.7	58.4	108.1	12.0	51.5	171.5
1959	486.5	50.4	59.0	109.4	12.3	49.7	171.3
1960	506.0	52.1	60.6	112.6	12.9	47.4	172.8
1961	523.3	54.5	62.8	117.2	13.5	47.2	177.8
1962	563.8	55.4	62.7	118.1	13.7	45.0	176.7
1963	594.7	58.2	64.6	122.7	14.2	43.3	180.1
1964	635.7	59.8	65.7	125.5	14.3	41.6	181.2
1965	688.1	61.7	67.3	129.0	14.3	38.7	182.0
1966	753.0	60.4	68.6	129.2	13.9	36.1	179.2
1967	796.3	61.4	70.7	132.1	14.2	36.0	182.2
1968	868.5	60.9	75.2	136.1	14.1	33.6	183.9
1969	935.5	60.5	81.7	142.2	14.2	30.9	187.4
1970	982.4	61.1	85.1	146.2	14.7	30.6	191.6
1971	1,063.4	62.8	85.7	148.5	15.3	30.6	194.4
1972	1,171.1	65.2	86.8	152.0	15.2	29.2	196.4
1973	1,306.3	65.4	89.3	154.7	14.6	26.7	196.1
1974	1,412.9	65.3	92.0	157.2	14.9	25.5	197.7
1975	1,528.8	65.0	89.3	154.4	14.6	29.2	198.1
1976	1,706.5	64.9	87.7	152.5	13.8	30.2	196.6
1977	1,890.4					30.3	

[1] Private corporate debt includes the debt of certain federally sponsored agencies in which there is no longer any Federal proprietary interest. The debt of the following agencies are included beginning these years: FLB's in 1949; FHLB's in 1951; FNMA-secondary market operations, FICB's, and BCOOP's in 1968. The total debt for these agencies amounted to $0.7 billion on Dec. 31, 1947, $3.5 billion on Dec. 31, 1960, $38.8 billion on Dec. 31, 1970, $78.8 billion on Dec. 31, 1975, and $81.4 billion on Dec. 31, 1976.

[2] Borrowing from the public equals gross Federal debt less securities held in Government accounts (a unified budget concept).

Note: Detail may not add to totals because of rounding. Real GNP is in constant 1972 dollars. Real per capita debt expressed in 1967 prices (i.e., Consumer Price Index for all items.

Source: Federal debt, Treasury Department; other data, Bureau of Economic Analysis, Commerce Department.

TABLE IX.—ESTIMATED FEDERAL DEBT RELATED TO POPULATION AND PRICES

[Amounts in dollars]

Year	Outstanding Federal debt			Per capita Federal debt [1]			Real per capita Federal debt		
	Gross [2]	Net [3]	Privately held net [4]	Gross [2]	Net [3]	Privately held net [4]	Gross [2]	Net [3]	Privately held net [4]
1929	$17.5	$16.5	$16.0	$144	$136	$131	$281	$265	$256
1930	17.3	16.5	15.8	141	134	128	292	269	266
1931	19.1	18.5	17.7	154	149	142	354	342	327
1932	22.0	21.3	19.4	176	171	155	451	437	396
1933	25.3	24.3	21.9	201	194	174	513	492	443
1934	33.3	30.4	28.0	264	241	221	657	600	551
1935	36.2	34.4	32.0	284	270	251	688	654	607
1936	40.3	37.7	35.3	315	294	275	752	704	658
1937	43.1	39.2	36.6	335	304	284	776	706	659
1938	45.6	40.5	37.9	351	312	291	837	744	695
1939	48.8	42.6	40.1	373	325	306	893	780	733
1940	52.2	44.8	42.6	394	338	321	934	802	761
1941	65.6	56.3	54.0	490	420	403	1,059	909	871
1942	113.7	101.7	95.5	840	751	705	1,661	1,486	1,394
1943	171.0	154.4	142.9	1,246	1,125	1,041	2,388	2,156	1,995
1944	233.6	211.9	193.1	1,682	1,525	1,390	3,156	2,863	2,608
1945	279.6	252.5	228.2	1,990	1,798	1,624	3,653	3,299	2,981
1946	260.4	229.5	206.1	1,835	1,617	1,452	2,841	2,504	2,248
1947	256.1	221.7	199.1	1,770	1,532	1,375	2,522	2,183	1,960
1948	252.6	215.3	192.0	1,716	1,463	1,304	2,384	2,032	1,811
1949	256.9	217.6	197.7	1,715	1,453	1,320	2,427	2,056	1,867
1950	256.5	217.4	196.6	1,684	1,428	1,291	2,252	1,909	1,725
1951	258.9	216.9	193.1	1,672	1,400	1,246	2,109	1,767	1,573
1952	267.0	221.5	196.8	1,695	1,406	1,249	2,119	1,758	1,562
1953	274.7	226.8	200.9	1,715	1,416	1,254	2,131	1,759	1,558
1954	278.0	229.1	204.2	1,705	1,405	1,252	2,128	1,754	1,563
1955	280.6	229.6	204.8	1,691	1,384	1,234	2,102	1,720	1,534
1956	277.2	224.3	199.4	1,641	1,328	1,180	1,983	1,605	1,426
1957	277.4	223.0	198.8	1,613	1,297	1,155	1,892	1,521	1,356
1958	284.5	231.0	204.7	1,627	1,321	1,170	1,876	1,523	1,349
1959	294.4	241.4	214.8	1,656	1,357	1,207	1,881	1,542	1,372
1960	294.1	239.8	212.4	1,628	1,327	1,175	1,823	1,486	1,316
1961	300.5	246.7	217.8	1,636	1,343	1,185	1,820	1,494	1,319
1962	308.0	253.6	222.8	1,651	1,360	1,194	1,815	1,495	1,313
1963	314.1	257.5	223.9	1,660	1,361	1,183	1,795	1,472	1,279
1964	323.4	264.0	224.0	1,685	1,376	1,183	1,801	1,470	1,264
1965	326.9	266.4	225.6	1,682	1,371	1,161	1,764	1,438	1,217
1966	339.6	271.8	227.5	1,728	1,383	1,157	1,753	1,403	1,174
1967	361.9	286.4	237.3	1,821	1,441	1,194	1,793	1,419	1,176
1968	371.3	291.9	238.9	1,850	1,454	1,190	1,739	1,367	1,119
1969	381.2	289.3	232.1	1,881	1,437	1,145	1,666	1,265	1,014
1970	400.8	301.1	239.0	1,956	1,470	1,166	1,643	1,234	979
1971	434.4	325.9	255.1	2,098	1,574	1,232	1,705	1,279	1,001
1972	460.2	341.2	269.9	2,203	1,634	1,292	1,732	1,284	1,015
1973	480.7	349.1	268.6	2,285	1,659	1,276	1,650	1,198	922
1974	504.0	360.8	280.1	2,378	1,703	1,322	1,531	1,096	851
1975	587.6	446.3	358.2	2,752	2,090	1,677	1,655	1,257	1,009
1976	664.8	515.8	418.5	3,090	2,398	1,945	1,773	1,376	1,116
1977	729.2	572.5	470.8	3,364	2,641	2,171	1,810	1,422	1,170

[1] Per capita debt is calculated by dividing debt figures by population of conterminous United States. Beginning 1969, population includes Armed Forces overseas, Hawaii, and Alaska.

[2] Total Federal securities includes public debt securities and budget agency securities.

[3] Borrowing from the public equals gross Federal debt less securities held in Government accounts (a unified budget concept).

[4] Borrowing from the public less Federal Reserve holdings.

Note: Detail may not add to totals because of rounding. Real GNP is in constant 1972 dollars. Real per capita debt expressed in 1967 prices (i.e., Consumer Price Index for all items).

Source: Federal debt, Treasury Department; other data, Bureau of Economic Analysis, Commerce Department.

TABLE X.—PRIVATELY HELD FEDERAL DEBT RELATED TO GNP

[Dollar amounts in billions]

Year	Gross national product	Privately held debt [1]	Ratio of debt to GNP	Year-to-year price changes [2]
1929	$103.4	$16.0	15.5	----------
1930	90.7	15.8	17.5	−6.0
1931	76.1	17.7	23.3	−9.5
1932	58.3	19.4	33.3	−10.2
1933	55.8	21.9	39.3	.6
1934	65.3	28.0	42.9	2.1
1935	72.5	32.0	44.2	3.0
1936	82.7	35.3	42.7	1.3
1937	96.7	36.6	37.9	3.2
1938	85.0	37.9	44.7	−2.7
1939	90.8	40.1	44.2	−.4
1940	100.0	42.6	42.7	1.0
1941	124.9	54.0	43.3	9.8
1942	158.3	195.5	60.4	9.3
1943	192.0	142.9	74.5	3.2
1944	210.5	193.1	91.8	2.2
1945	212.3	228.2	107.5	2.3
1946	209.6	206.1	98.4	18.6
1947	232.8	199.1	85.6	8.7
1948	259.1	192.0	74.2	2.6
1949	258.0	197.7	76.7	−1.8
1950	286.2	196.6	68.7	5.9
1951	330.2	193.1	58.5	6.0
1952	347.2	196.8	56.7	.9
1953	366.1	200.9	54.9	.7
1954	366.3	204.2	55.8	−.4
1955	399.3	204.8	51.3	.4
1956	420.7	199.4	47.4	2.9
1957	442.8	198.8	44.9	3.1
1958	448.9	204.7	45.7	1.8
1959	486.5	214.8	44.2	1.5
1960	506.0	212.4	42.0	1.5
1961	523.3	217.8	41.7	.7
1962	563.8	222.8	39.6	1.3
1963	594.7	223.9	37.7	1.7
1964	635.7	227.0	35.8	1.2
1965	688.1	225.6	32.8	2.0
1966	753.0	227.5	30.3	3.4
1967	796.3	237.3	29.9	3.0
1968	868.5	238.9	27.6	4.7
1969	935.5	232.1	24.9	6.1
1970	982.4	239.0	24.4	5.5
1971	1,063.4	255.6	24.0	3.4
1972	1,171.1	271.1	23.1	3.4
1973	1,306.3	270.4	20.7	8.8
1974	1,412.9	280.1	19.8	12.2
1975	1,528.8	358.2	23.4	7.0
1976	1,706.5	418.5	24.5	4.8
1977	1,890.4	470.8	24.9	6.8

[1] Borrowing from the public less Federal Reserve holdings.
[2] Measured by all item Consumer Price Index, December to December basis.

Note: Detail may not add to totals because of rounding. Real GNP is in constant 1972 dollars. Real per capita debt expressed in 1967 prices (i.e., Consumer Price Index for all items).

Source: Federal debt, Treasury Department; other data, Bureau of Economic Analysis, Commerce Department.

READEX FICHE

TABLE XI.—CHANGES IN PER CAPITA REAL GROSS NATIONAL PRODUCT

Year	GNP in (billions of 1972 dollars)	GNP per capita (constant 1972 dollars)[1]	GNP per capita, change from year ago	
			Constant 1972 dollars	Percent
1929	314.7	2,584		
1930	385.1	3,129	544	21
1931	263.3	2,123	−1,006	−32
1932	227.1	1,819	−303	−14
1933	222.1	1,769	−50	−2
1934	239.3	1,894	125	7
1935	261.0	2,051	157	8
1936	297.1	2,320	269	13
1937	310.8	2,413	92	4
1938	297.8	2,294	−118	−4
1939	319.7	2,443	148	6
1940	343.6	2,591	148	6
1941	396.6	2,962	370	14
1942	454.6	3,358	396	13
1943	527.3	3,842	483	14
1944	567.0	4,082	239	6
1945	559.0	3,980	−101	−2
1946	477.0	3,361	−618	−15
1947	468.3	3,236	−124	−3
1948	487.7	3,313	76	2
1949	490.7	3,276	−36	−1
1950	533.5	3,504	227	6
1951	576.5	3,722	218	6
1952	598.5	3,799	76	2
1953	621.8	3,882	83	2
1954	613.7	3,764	−117	−2
1955	654.8	3,945	181	4
1956	668.8	3,960	13	
1957	680.9	3,959		
1958	679.5	3,885	−73	−1
1959	720.4	4,051	165	4
1960	736.8	4,078	27	
1961	755.3	4,112	33	
1962	799.1	4,284	172	4
1963	830.7	4,390	105	2
1964	874.4	4,557	167	3
1965	925.9	4,765	208	4
1966	981.0	4,991	225	4
1967	1,007.7	5,071	80	1
1968	1,051.8	5,241	169	3
1969	1,078.8	5,323	82	1
1970	1,075.3	5,249	−74	−1
1971	1,107.5	5,349	100	1
1972	1,171.1	5,607	258	4
1973	1,235.0	5,869	262	4
1974	1,217.8	5,747	−122	−2
1975	1,202.1	5,629	−118	−2
1976	1,274.7	5,926	297	5
1977	1,337.6	6,169	243	4

[1] Per capita debt is calculated by dividing debt figures by population of conterminous United States. Beginning 1940 population includes Armed Forces overseas, Hawaii, and Alaska.

Note: Detail may not add to totals because of rounding. Real GNP is in constant 1972 dollars. Real per capita debt expressed in 1967 prices (i.e., Consumer Price Index for all items).

Source: Federal debt, Treasury Department; other data, Bureau of Economic Analysis, Commerce Department.

V. Costs of Carrying Out the Bill and Vote of the Committee in Reporting the Bill

In compliance with section 252(a) of the Legislative Reorganization Act of 1970, the following statement is made relative to the costs of carrying out H.R. 13358. The Committee does not believe that the change made by this bill in the debt limitation or in the debt management provision will result in any additional costs either in the current fiscal year or in any of the five fiscal years to follow.

In compliance with section 133 of the Legislative Reorganization Act of 1964, the following statement is made relative to the vote by the

Committee on the motion to report the bill. The bill was ordered reported by a voice vote.

The bill neither increases nor decreases tax expenditures during the next 5 fiscal years.

VI. Changes in Existing Law Made by the Bill, As Reported

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

Second Liberty Bond Act

AN ACT To authorize an additional issue of bonds to meet expenditures for the national security and defense, and, for the purpose of assisting in the prosecution of the war, to extend additional credit to foreign Governments, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury, with the approval of the President, is hereby authorized borrow, from time to time, on the credit of the United States for the purposes of this act, to provide for the purchase, redemption, or refunding, at or before maturity, of any outstanding bonds, notes, certificates of indebtedness, or Treasury bills of the United States, and to meet expenditures authorized for the national security and defense and other public purposes authorized by law, such sum or sums as in his judgment may be necessary, and to issue therefor bonds of the United States.

The bonds herein authorized shall be in such form or forms and denomination or denominations and subject to such terms and conditions of issue, conversion, redemption, maturities, payment, and rate or rates of interest, not exceeding four and one-quarter per centum per annum, and time or times of payment of interest, as the Secretary of the Treasury from time to time at or before the issue thereof may prescribe. Bonds authorized by this section may be issued from time to time to the public and to Government accounts at a rate or rates of interest exceeding 4¼ per centum per annum; except that bonds may not be issued under this section to the public, or sold by a Government account to the public, with a rate of interest exceeding 4¼ per centum per annum in an amount which would cause the face amount of bonds issued under this section then held by the public with rates of interest exceeding 4¼ per centum per annum to exceed [$27,000,000,000] *$32,000,000,000*.

The bonds herein authorized shall from time to time first be offered at not less than par as a popular loan, under such regulations, prescribed by the Secretary of the Treasury from time to time, as will in his opinion give the people of the United States as nearly as may be an equal opportunity to participate therein, but he may make allotment in full upon applications for smaller amounts of bonds in advance of any date which he may set for the closing of subscriptions and may

reject or reduce allotments upon later applications and applications for larger amounts, and may reject or reduce allotments upon applications from incorporated banks and trust companies for their own account and make allotment in full or large allotments to others, and may establish a graduated scale of allotments, and may from time to time adopt any or all of said methods, should any such action be deemed by him to be in the public interest: *Provided*, That such reduction or increase of allotments of such bonds shall be made under general rules to be prescribed by said Secretary and shall apply to all subscribers similarly situated. And any portion of the bonds so offered and not taken may be otherwise disposed of by the Secretary of the Treasury in such manner and at such price or prices, not less than par, as he may determine. The Secretary may make special arrangements for subscriptions at not less than par from persons in the military or naval forces of the United States, but any bonds issued to such persons shall be in all respects the same as other bonds of the same issue.

Notwithstanding the provisions of the foregoing paragraph, the Secretary of the Treasury may from time to time, when he deems it to be in the public interest, offer such bonds otherwise than as a popular loan and he may make allotments in full, or reject or reduce allotments upon any applications whether or not the offering was made asa popular loan.

* * * * * * *

SEC. 21. The face amount of obligations issued under authority of this Act, and the face amount of obligations guaranteed as to principal and interest by the United States (except such guaranteed obligations as may be held by the Secretary of the Treasury), shall not exceed in the aggregate $400,000,000,000 [1] outstanding at any one time. The current redemption value of any obligation issued on a discount basis which is redeemable prior to maturity at the option of the holder thereof shall be considered, for the purposes of this section, to be the face amount of such obligation.

* * * * * * *

ACT OF OCTOBER 4, 1977

AN ACT To increase the temporary debt limit, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, [That during the period beginning on the date of the enactment of this Act and ending on July 31, 1978, the public debt limit set forth in the first sentence of section 21 of the Second Liberty Bond Act (31 U.S.C. 757b) shall be temporarily increased by $352,000,000,000.]

* * * * * * *

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[1] The bill as reported provides for a temporary increase of $398,000,000,000 in this debt ceiling for the period beginning on the date of enactment of this Act and ending on March 31, 1979.

VII. Regulatory Impact of the Bill and Other Matters To Be Discussed Under Senate Rules

Regulatory Impact

Pursuant to rule XXIX of the Standing Rules of the Senate, as amended by Senate Resolution 4 (Feb. 4, 1977), the committee makes the following statement concerning the regulatory impact that might be incurred in carrying out the provisions of this bill.

A. *Numbers of individuals and businesses who would be regulated.*—The bill does not include any provisions which regulate individuals or businesses. The bill relates to authority for the Federal Government to issue various forms of indebtedness.

B. *Economic impact of regulation on individuals, consumers and businesses affected.*—This bill has no regulatory economic impact on individuals, consumers or businesses.

C. *Impact on personal privacy.*—The bill has no impact on the personal privacy of taxpayers.

D. *Determination of the amount of paperwork.*—The bill will not change the amount of paperwork done by individuals or businesses which hold debt obligations that are issued by the Federal Government and are subject to the public debt limit.

Consultation with Congressional Budget Office on Budget Estimates

In accordance with section 403 of the Budget Act, the committee advises that the Director of the Congressional Budget Office has not submitted a statement with respect to this bill.

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95TH CONGRESS
2d Session

SENATE

Calendar No. 965

REPORT
No. 95-1043

DEPARTMENTS OF STATE, JUSTICE, AND COMMERCE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATION BILL, 1979

JULY 28 (legislative day, MAY 17), 1978.—Ordered to be printed

Mr. HOLLINGS, from the Committee on Appropriations, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany H.R. 12934]

The Committee on Appropriations, to which was referred the bill, (H.R. 12934) making appropriations for the Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies for the fiscal year ending September 30, 1979, and for other purposes, reports the same to the Senate with various amendments and presents herewith information relative to the changes made.

AMOUNT IN NEW BUDGET (OBLIGATIONAL) AUTHORITY

Amount of bill as passed House	$4,588,717,900
Amount of Senate bill over comparable House	127,782,700
Amount added by Senate for items not considered by House	3,918,937,400
Total bill as reported to Senate	8,635,438,000
Amount of appropriations, 1978	9,872,611,000
Amount of budget estimates, 1979, as amended	8,660,276,000
The bill as reported to the Senate:	
Under the appropriations for 1978	−1,237,173,400
Under the estimates for 1979	−24,838,000

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SUMMARY OF BUDGET ESTIMATES AND AMOUNTS RECOMMENDED

Department or agency	New budget (obligational) authority, fiscal year 1978 (enacted to date)	Budget estimates of new (obligational) authority, fiscal year 1979	New budget (obligational) authority allowed in House bill	New budget (obligational) authority recommended by Committee	Increase (+) or decrease (−), Senate bill compared with—		
					New budget (obligational) authority, fiscal year 1978 (enacted to date)	Budget estimates of new (obligational) authority, fiscal year 1979	New budget (obligational) authority recommended in House bill
Department of State	$1,151,847,000	$1,262,897,000	----------	$1,262,291,000	+$110,444,000	−$606,000	+$1,262,291,000
Department of Justice	2,300,619,000	2,471,002,000	$834,441,000	2,484,579,060	+183,960,000	+13,577,000	+1,650,138,000
Department of Commerce	1,934,454,000	2,422,607,000	1,793,034,000	2,417,425,000	+482,971,000	−5,182,000	+624,391,000
The Judiciary	444,318,000	495,552,000	481,316,600	490,675,000	+46,357,000	−4,877,000	+9,358,400
Related agencies:							
Arms Control and Disarmament Agency	13,600,000	16,395,000	----------	16,395,000	+2,795,000	----------	+16,395,000
Board for International Broadcasting	65,900,000	85,180,000	----------	85,000,000	+19,100,000	−180,000	+85,000,000
Commission on Civil Rights	10,480,000	10,752,000	----------	10,752,000	+272,000	----------	+10,752,000
Commission on Security and Cooperation in Europe	347,000	521,000	350,000	521,000	+174,000	----------	+171,000
Equal Employment Opportunity Commission	77,050,000	110,000,000	110,000,000	110,000,000	+32,950,000	----------	----------
Federal Communications Commission	61,400,000	68,196,000	68,535,000	70,446,000	+9,046,000	+2,250,000	+1,911,000
Federal Maritime Commission	9,424,000	10,530,000	10,500,000	10,550,000	+1,126,000	+20,000	+50,000
Federal Trade Commission	59,500,000	66,485,000	----------	65,900,000	+6,400,000	−585,000	+65,900,000
Foreign Claims Settlement Commission	920,000	1,015,000	----------	----------	−920,000	−1,015,000	----------

SUMMARY OF BUDGET ESTIMATES AND AMOUNTS RECOMMENDED—Continued

Department or agency	New budget (obligational) authority, fiscal year 1978 (enacted to date)	Budget estimates of new (obligational) authority, fiscal year 1979	New budget (obligational) authority allowed in House bill	New budget (obligational) authority recommended by Committee	Increase (+) or decrease (−), Senate bill compared with—		
					New budget (obligational) authority, fiscal year 1978 (enacted to date)	Budget estimates of new (obligational) authority, fiscal year 1979	New budget (obligational) authority recommended in House bill
International Communication Agency	364,752,400	413,327,000		413,309,000	+48,736,000	−18,000	+413,309,000
International Trade Commission	11,500,000	13,113,000		13,100,000	+1,600,000	−13,000	+13,100,000
Japan-United States Friendship Commission	1,000,000	1,500,000	1,500,000	1,500,000	+500,000		
Legal Services Corporation	205,000,000	304,000,000	285,000,000	255,000,000	+50,000,000	−49,000,000	−30,000,000
Marine Mammal Commission	900,000	702,000	702,000	840,000	−60,000	+138,000	+138,000
National Commission on the International Year of the child		1,360,000				−1,360,000	
Office of the Special Representative for Trade Negotiations	2,680,000	2,665,000	2,665,000	2,665,000	−15,000		
Presidental Commission on Hunger		1,500,000		1,500,000	+1,500,000		+1,500,000
Renegotiation Board	6,000,000	7,277,000	3,000,000	6,260,000	+260,000	−1,017,000	+3,260,000
Securities and Exchange Commission	58,100,000	64,800,000		64,650,000	+6,550,000	−150,000	+64,650,000
Small Business Administration	3,093,000,000	827,100,000	1,090,500,000	850,280,000	−2,242,720,000	+23,180,000	−240,220,000
United States Metric Board		1,800,000		1,800,000	+1,800,000		+1,800,000
Subtotal	9,872,611,400	8,660,276,000	4,681,543,600	8,635,438,000	−1,237,173,400	−24,838,000	+3,953,894,400
Sec. 605 General Reduction, 2 percent (estimate)			−92,825,700				+92,825,700
Total	9,872,611,400	8,660,276,000	4,588,717,900	8,635,438,000	−1,237,173,400	−24,838,000	+4,046,720,100

Highlights of the Bill

The Committee recommends a total of $8,635,438,000 in new budget authority for fiscal year 1979. This is an increase of $127,812,700 over the comparable amount approved by the House of Representatives, when consideration is given to the recommended items amounting to $3,910,235,000 deleted on points of order when the bill was before the House; and $8,702,400 for items not considered at all by the House. The new budget authority recommended is $1,564,562,000 less than the allocation to the Subcommittee on State, Justice, Commerce, the Judiciary and Related Agencies appropriation in the first concurrent budget resolution.

The major changes from the House bill are described in the following:

Department of State.—A total of $1,262,291,000 is recommended, none of which is in the House bill because of lack of authorization at the time of House consideration. The amount recommended for the Department includes an additional $6,356,000 over the budget for the acquisition of additional buildings abroad and the full payment of our estimated contributions to international organizations as well as amounts required for the administration of the nation's foreign affairs and representation to various international organizations and conferences.

Department of Justice.—A total of $2,484,579,000 is recommended and includes the restoration of the current level for part B State and local planning grants of the Law Enforcement Assistance Administration. The amount recommended for LEAA also provides the $10 million requested for the new urban crime program outlined by the President in the new urban policy announced on March 27, 1978.

The Committee has provided the full amount requested for the general legal activities and the Antitrust Division and has maintained the $10 million level for the grants to the States to improve their antitrust activities. The Committee has added $2 million to the request of the Federal Bureau of Investigation consisting of $1 million each to partially restore the reductions in the budget for headquarters coordination of domestic security and terrorism activities; as well as the actual investigations of domestic security and terrorism.

The amount recommended also provides for a total of 926 new positions for the Immigration and Naturalization Service of which 648 are for additional support of the prevention program designed to control the entry of illegal aliens into the country; as well as providing other critically needed positions for the INS including the establishment of a new office for the Carolinas. While the Committee in supplying all the additional personnel requested for the prevention program, it is compelled to restate its opinion that a more real remedy to the illegal alien situation would be legislation imposing penalties for employing illegal aliens instead of adding additional enforcement personnel on an unpoliceable border.

Two new minimum security camps to be established on former military bases are recommended for the Federal Prison System. The Committee recommends that the Bureau of Prisons utilize former military installations as a way of alleviating the 30 percent over-crowding in

the Bureau's various facilities as well as mitigating the economic impact of base closures.

Department of Commerce.—A total of $2,417,425,000 is recommended, including an increase of $70,350,000 over the request for the Economic Development Administration to provide full funding of the business loans and guarantees under title II of the Public Works and Economic Development Act of 1965, as amended. The Committee's recommendation also provides funding for all 103 designated but unfunded economic development districts.

The $737,400,000 recommended for the National Oceanic and Atmospheric Administration provides for major expansion of the operations, research and facilities activities including an increase for $5,300,000 over the budget for the highly successful sea grant program. The Committee is fully supportive of the Coastal Zone Management program.

The Committee's allowance also provides the full amount requested for the final preparations for the 1980 Decennial Census as well as the full amounts requested for economic and statistical analysis and the new National Telecommunications and Information Administration.

The Committee recommends the full budget of the new Industry and Trade Administration in view of the recordbreaking trade deficits being incurred, and also recommends additional funds to computerize import data to assist in stopping illegal imports of foreign made textiles and other goods.

The amount recommended for the Office of Minority Business Enterprise is $7,665,000 more than the current level and the full amount requested for the National Fire Prevention and Control Administration is also recommended.

The Judiciary.—A total of $490,675,000 is recommended for the Judiciary. The Committee recommends an increase to the budget of the Supreme Court in order to supply each Associate Justice with a leased automobile as well as providing two additional secretaries for each Justice in order to cope with increasing workloads. No provision has been made for additional circuit and district judgeships that may be authorized by Congress.

Related Agencies.—A total of $1,980,468,000 is recommended for the related agencies covered by this bill. The amount recommended is $2,060,905,400 below the 1978 appropriations to date because of the massive disaster relief appropriations made to the Small Business Administration. The amount recommended by the Committee will cover a normal year of disaster activities and hopefully favorable weather will avert the need in 1979 for loans to drought-stricken farmers.

The Committee has provided the full amount requested for the Arms Control and Disarmament Agency, as well as the request of the Civil Rights Commission, the Commission on Security and Cooperation in Europe, the Foreign Claims Settlement Commission, the Equal Employment Opportunity Commission, the Japan-United States Friendship Commission, and the Office of Special Trade Representative for Trade Negotiations.

The Committee has provided additional positions above the budget request for the Federal Communications Commission for a network

inquiry, additional workload in the common carrier area, the processing of fee refunds pursuant to Court Order, and for improving UHF television broadcasting. The recommended level for the Federal Maritime Commission makes provision for a new district office in Hawaii; and the budget of the Marine Mammal Commission reflects a more gradual decrease from prior year levels than was budgeted.

The Committee recommends $65,900,000 for the Federal Trade Commission which provides for all but 16 of the 66 new positions requested. The Committee has serious reservations about the Commission's proposed activities in the area of children's advertising.

The Committee recommends the $255,000,000 requested by the President for the Legal Services Corporation as well as the virtually full requests for the new International Communication Agency, the Securities and Exchange Commission, and the U.S. Metric Board.

The Committee recommends $6,260,000 to provide for interim operations and the termination of the Renegotiation Board by May 31, 1979. The Board has not had authority to review Government contractors' receipts or accruals after October 1, 1976 and new legislation seems hopelessly snagged in Congress. The Committee believes that sufficient other protective devices have been installed so that this Board is no longer necessary.

REPROGRAMING, REORGANIZATIONS, AND RELOCATIONS

The House and Senate reports accompanying the appropriation bills for the Departments of State, Justice, and Commerce, the Judiciary, and related agencies for fiscal years 1977 and 1978 contained a section concerning the reprograming of funds between programs or activities. Although the departments and agencies have generally complied with these requirements satisfactorily, there have been several instances where agencies chose to interpret the Committee guidelines in a way not intended, and, as a result, did not submit reprograming requests. For example, some assumed that even though more than $250,000 was being transferred, a report did not need to be submitted if several activities were involved with each receiving less than $250,000. Others have assumed that there was a difference between permanent transfers and temporary transfers. These kinds of interpretations run counter to the Committee's intentions and give the appearance of an attempt to avoid compliance with these guidelines. The Committee has thus attempted to clarify its reprograming procedures, for agencies receiving funds pursuant to this bill, and expects them to be closely followed.

The Committee desires and expects that the Chairman of the Subcommittee on the Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies be notified in writing a minimum of 15 days prior to—

(1) Reprograming of funds, whether permanent or temporary, in excess of $250,000 or 10 percent, whichever is less, between programs or activities. This provision is also applicable in cases where several activities are involved with each receiving less than $250,000. In addition, the Committee desires to be notified of

reprograming actions which are less than these amounts if such actions would have the effect of committing the agency to significant funding requirements in future years.

(2) Increasing funds or personnel by any means for any project or activity for which funds have been denied or restricted.

(3) Creation of new programs or substantial augmentation of existing programs.

(4) Relocation of offices or employees.

(5) Reorganization of offices, programs, or activities.

The Committee also expects that any items which are subject to interpretation will be reported.

RELOCATION OF OFFICES

During the course of the Committee's hearings with the Department of Justice there was extensive discussion of the movement of the U.S. Marshals Service headquarters elements to Tyson's Corner in McLean, Va. The Committee is fully supportive of that part of the President's urban policy that will end the flight of Federal offices from central cities to suburban locations. Thus it was surprising to find that the U.S. Marshals Service was to be moved to the fringe of the Washington metropolitan area. This transfer was all the more surprising since the Committee had not been notified as it should have been pursuant to the above requirements which are identical to those contained in our previous reports.

The Assistant Attorney General for Administration testified about the merits of consolidating the Department's legal activities in or close to the Main Justice Department Building, the general lack of adequate office space in the downtown Washington area, and the intent to move the Marshals Service to Tyson's Corner. The Committee appreciates the Attorney General's desire to consolidate the local divisions and voiced a desire to work with the Department on the overall space problem and to find adequate space for the Marshals Service in the downtown area. Subsequent to the Committee hearing, the Committee was surprised to learn that its offer to assist the Department was moot, since a final decision to move had already been made several months previously.

While the Committee appreciates that the General Services Administration may have been unable to locate space for the Marshals Service in downtown Washington, D.C., it was nevertheless incumbent on the Department to notify the Committee of these developments. Instead of notifying the Committee, the Department proceeded to initiate a Standard Form 81, "Request for Space" which was transmitted to GSA on September 14, 1977. An attachment to this request included a suggestion that "general boundaries be established 2 miles either side of the Capital Beltway at a point within 30 minutes of the Department of Justice, National Airport, and Dulles International Airport."

This statement also went on to note: "A review of the space at the Tysons Corner Shopping Mall indicated that the above conditions can be met." Pursuant to this request, the GSA Administrator, after meeting with the Attorney General, approved the solicitation of bids for

leasing space in Northern Virginia for the U.S. Marshals Service. On December 30, 1977, a contract was entered into to lease a total of 59,955 net usable space at the Tyson's Corner Office Building.

With this case as an example, the Committee admonishes the departments and agencies within the jurisdiction of this act to notify the Committee of any relocation of offices to outside the limits of the cities and counties where presently located. Otherwise, the Committee will not be responsible for providing funds necessary for the payment of any lease where such notification is not given and approved by the Chairman of the Subcommittee on State, Justice, Commerce, the Judiciary and Related Agencies.

UNBUDGETED EQUIPMENT EXPENDITURES

The Committee made a special review of the 1977 expenditures by the agencies covered by this bill for travel, other services, and equipment. This review found many instances of expenditures for these object classes far exceeding the amounts projected in the President's budget in January 1977. Particularly alarming were the great amounts obligated for equipment in the last month of the fiscal year. It is obvious that these September sprees were largely occasioned by savings in the compensation and benefits accounts due to delays in filling positions.

The Committee does not believe that these unbudgeted expenditures are justified as long as they are spent within the same budget activity. The 1978 expenditures will be similarly reviewed and a far better record is certainly expected. The Committee directs that proper controls be established so that the amount included in the current year column of the President's budget, for travel, other services and equipment, shall not be exceeded by 15 percent, unless a reprograming notification has been submitted to the Committee and not disapproved.

POSITION CEILINGS

The Committee is alarmed about the practice of the Office of Management and Budget in establishing unilateral ceilings on employment. In several instances the Committee has allowed the additional positions requested by the administration, only to find them unfilled a year later because of the imposition of personnel ceilings. These ceilings have led to contracting out functions that should be performed by Federal employees and have been used to force absorption of pay raises. The result in many cases has been a severe erosion of the personnel base which is documented by the high lapse rates budgeted for several major agencies in the bill.

The imposition of the personnel ceilings has brought considerable confusion to the Committee's hearings. The Congress has always reviewed the budget in terms of the number of permanent positions allowed, requested, and filled, and it does little good to hear about "ceiling points" from hard-pressed agency managers.

An excellent example of the wastefulness of the OMB doctrine of "Government by Personnel Ceiling" was the testimony of the Attorney General. After indicating that he would have preferred to have more paralegal positions instead of the additional attorneys requested, but, since under the ceilings a GS–15 attorney and a GS–9 paralegal count

the same, he was forced to use the scarce ceiling to use it for the higher paid lawyer when he would rather have had two paralegals at less overall cost instead.

The Committee is particularly disturbed about the effect of these ceilings on: the critical services of the National Oceanic and Atmospheric Administration; the protection of the millions invested by the Economic Development Administration and the Small Business Administration; the law enforcement responsibilities assigned to the Federal Bureau of Investigations, the Immigration and Naturalization Service, and the Drug Enforcement Administration; the custody and rehabilitation of the prisoners assigned to the Federal Prison System; the promotion of American exports as well as the regulation of imports and other vital services by the Industry and Trade Administration; the administration of the Nation's foreign affairs, as well as the regulatory function of such agencies as the Federal Communications Commission and the Federal Trade Commission.

The Committee has inserted provisions in the appropriations of the following agencies providing that ceilings on permanent positions shall not be established at less than the number indicated:

Department of State:	
Administration of Foreign Affairs:	
Salaries and expenses	16,435
Department of Justice:	
Federal Bureau of Investigation:	
Salaries and expenses	18,675
Immigration and Naturalization Service:	
Salaries and expenses	10,600
Drug Enforcement Administration:	
Salaries and expenses	4,075
Federal Prison System:	
Salaries and expenses	8,950
Total, Department of Justice	53,410
Department of Commerce:	
Economic Development Administration:	
Administration of economic development assistance programs	878
Industry and Trade Administration:	
Salaries and expenses	1,700
National Oceanic and Atmospheric Administration:	
Operations, research and facilities	11,700
Coastal zone management	94
Total, Department of Commerce	*30,100
Federal Communications Commission:	
Salaries and expenses	2,283
Federal Trade Commission:	
Salaries and expenses	1,700
Small Business Administration:	
Salaries and expenses	4,860

The establishment of these minimum ceilings is not to be construed as mandating that employment be maintained at these levels when ordinary and good management practice would dictate a lower level. Rather, it is the intent of the Committee to preclude the establishment of ceilings that inhibit ordinary and good management of the resources assigned these agencies by the Congress.

FORMAT OF BUDGET ESTIMATES

At the request of the new Administration, the Committee agreed to substantial changes in the format of the 1979 budget estimates of

many of the agencies in the bill. In most instances these format changes conformed to the operating pattern of the agencies, and ordinarily the Committee would share the goal of melding the structure of the presentation and operating budgets.

However, the revised presentations of the Law Enforcement Assistance Administration and the Economic Development Administration did not prove to be satisfactory. Both of these agencies are of significant congressional and public interest. The Committee found it difficult to respond to this interest in the absence of the traditional budget structure that was based on the authorization acts of these agencies. Until the legislative committees can be persuaded to revise the authorizations to the new operating structures, the Committee must insist that the budget estimates for these two agencies contain the current structure of the authorizing legislation. The tables on pages 34 and 41 display the minimum level of information needed for the LEAA and EDA, respectively.

The Committee directs that any agency contemplating a change in the budget structure submit the proposed format for review by not later than December 1 so that the Committee's review and decision may be obtained in sufficient time to meet the deadlines for printing the President's budget.

TITLE I—DEPARTMENT OF STATE

Administration of Foreign Affairs

SALARIES AND EXPENSES

1978 appropriations to date	[1] $603, 577, 000
1979 budget estimate	662, 117, 000
House allowance	
Committee recommendation	661, 000, 000

[1] Excludes pending supplemental appropriation estimates of $19,232,000.

The Committee recommends an appropriation of $661,000,000, an increase of $57,423,000 over the 1978 appropriations to date. The amount recommended is $1,117,000 under the budget estimate and $661,000,000 over the amount allowed by the House; and will support a total of 16,681 permanent positions.

These funds are for the formulation and execution of the foreign policy of the United States, including the conduct of diplomatic and consular relations with foreign countries, diplomatic relations with international organizations, and related activities. The increase over the current appropriation is to cover nondiscretionary increases such as annualization of wage and salary increases, within grade salary increases, local employee wage increases, price increases, increased workload in the consular and passport areas, and other nondiscretionary increases. The amount recommended will also provide for improved support of the Department's programs in such areas as training, passport activities, the travel document and issuance system, administrative support and equipment.

The Committee has approved $2,000,000 requested for communications terminal equipment. A memorandum of agreement between the Departments of State and Defense providing for a unified Diplomatic Telecommunications Services (DTS) is currently being revised to avoid unnecessary duplication of overseas communication systems. As this memorandum is now nearing final form the Committee believes it is prudent to provide these funds for the needed communications terminal equipment to continue modernization of the Department's vital worldwide communications system. The Committee has the Department's assurance that it will make every possible effort to insure that there is no unnecessary duplication with any other Government agency in the operation of its communication system within the DTS.

WORLD ADMINISTRATIVE RADIO CONFERENCE

While the State Department has not requested specific appropriations for the advance planning and representation of the United States at the World Administrative Radio Conference to be held in Geneva, Switzerland in 1979, monies appropriated by this Committee are being used for these functions.

The World Administrative Radio Conference will reallocate the worldwide use of the electromagnetic spectrum for the rest of the century. As the greatest user of spectrum space, the United States has a very high stake in this process. The developing countries have been organizing to get a much larger share of the spectrum. This problem was stated, for example, in a recent meeting of the International Institute of Communications. A leading Sudan official, Minister Ali Shummo stated: "The Industrial nations have 90 percent of the spectrum and 10 percent of the population. We, the nonindustrialized world, have 90 percent of the population and 10 percent of the spectrum. We want our share."

The decisions made at WARC will be made on the basis of one country, one vote will have a tremendous impact upon the United States for many years to come. In order to maintain our leadership in this high technology area, the outcome of this important conference must be fair to the United States.

The Committee believes that the State Department has not adequately been meeting its responsibilities in preparing for this very important Conference. They have been slow in selecting the U.S. delegation to represent the United States in Geneva. It is impossible to expect a delegation to be handed a pat U.S. position, be briefed on a number of important issues and preparatory meetings held with other countries in which the needs and attitudes of other countries were discussed and then to go to the main match in Geneva with any kind of feel for the situation.

While the Committee agrees with the decision of the State Department to meet with representatives of other countries in a preparatory fashion, the Committee feels it will be a more constructive use of the Department's time to be meeting with the less developed countries that will have the votes to determine the final outcome of the Conference than just with allies whose interests are similar to our own.

REPRESENTATION ALLOWANCES

1978 appropriations to date	$2,500,000
1979 budget estimate	2,900,000
House allowance	
Committee recommendation	2,900,000

The Committee recommends an appropriation of $2,900,000, an increase of $400,000 over the 1978 appropriations to date. The amount recommended is the same as the budget estimate and $2,900,000 over the amount allowed by the House.

These funds will be used to partially reimburse foreign service officers for the expenditures they incur in their official capacities abroad in establishing and maintaining contacts with local government officials and influential members of the local community. The increase over the current appropriation is to cover price increases abroad, representation at new posts and reflects an increased congressional awareness of out-of-pocket expense.

ACQUISITION, OPERATION, AND MAINTENANCE OF BUILDINGS ABROAD

1978 appropriations to date	[1] $103,101,000
1979 budget estimate	118,644,000
House allowance	
Committee recommendation	125,000,000

[1] Excludes pending supplemental estimate of $10,209,000.

The Committee recommends an appropriation of $125,000,000, an increase of $21,899,000 over the 1978 appropriations to date. The amount recommended is $6,356,000 over the budget estimate and $125,000,000 over the amount allowed by the House; and will support a total of 93 permanent positions.

These funds are used to construct, purchase, or lease office space for the Foreign Service and other Government agencies abroad and living quarters for American staff at diplomatic and consular posts where housing problems exist.

The Committee has provided a $6,356,000 increase over the budget request for the acquisition of the following additional properties:

Country and Post	Project	Estimate
Chile, Santiago	21 single staff residences	$1,200,000
United Kingdom, London	29 staff apartments/duplexes	1,435,000
Bahrain, Manama	5 single staff residences	675,000
Qatar, Doha	3 senior officer residences	425,000
Saudi Arabia, Jidda	4 senior officer residences	466,000
Do	6 staff apartment/duplexes	465,000
United Arab Emirates, Abu Dhabi	4 senior office residences	660,000
Do	1 middle grade officer residence	150,000
Do	8 single staff residences	880,000

The recommended amount for both this and the following special foreign currency appropriation covers the requested $57,725,000 for the capital program which will enable the Department to obtain 5 office buildings, 265 living units, 8 sites for future construction, and develop plans and specifications for later construction of 7 office buildings and 68 living units. The Committee expects that the increase provided to the capital program will enable the Department to reflect reduced costs or savings in short-term leasing and other rental costs in future years.

The recommended amount includes $16,500,000 to complete the second phase of construction of an embassy complex in Moscow consisting of office, residential, and service facilities. This amount represents a decrease of $28,500,000 from appropriated funds for the current fiscal year. To date, $75,000,000 has been appropriated for this complex and it is now estimated that the project will cost approximately $100,000,000 with an estimated completion of 1982. The Committee expects construction to parallel construction of the Washington embassy project of the U.S.S.R.

The remaining $56,800,000 of the recommended amount is for the day-to-day operating and maintenance activities. An increase of $6,900,000 will provide for the mandatory costs anticipated in fiscal year 1979, consisting primarily of within-grades, annualization of the October 1977 salary increase, and wage and price increases. Additionally, $3,350,000 is included for operating, maintenance and furnishing costs of new properties to be acquired in fiscal year 1978 and 1979.

ACQUISITION, OPERATION, AND MAINTENANCE OF BUILDINGS ABROAD

(SPECIAL FOREIGN CURRENCY PROGRAM)

1978 appropriations to date	$7,520,000
1979 budget estimate	6,025,000
House allowance	
Committee recommendation	6,025,000

The Committee recommends an appropriation of $6,025,000, a decrease of $1,495,000 under the 1978 appropriations to date. The amount

recommended is the same as the budget estimate and $6,025,000 over the amount allowed by the House.

The special foreign currency appropriation provides for the use of excess foreign currencies in the Foreign Buildings programs, pursuant to the authority contained in section 4 of the Foreign Service Buildings Act, as amended, and thereby reduces U.S. dollar expenditures.

EMERGENCIES IN THE DIPLOMATIC AND CONSULAR SERVICE

1978 appropriations to date	$2,350,000
1979 budget estimate	2,350,000
House allowance	----------
Committee recommendation	2,350,000

The Committee recommends $2,350,000, the full amount requested, to enable the Secretary of State to meet unforeseen emergencies arising in the Diplomatic and Consular Service. These funds provide for relief and repatriation loans for American citizens abroad and are available for other emergencies in the Department.

PAYMENT TO THE FOREIGN SERVICE RETIREMENT AND DISABILITY FUND

1978 appropriations to date	[1] $26,599,000
1979 budget estimate	38,107,000
House allowance	----------
Committee recommendation	38,107,000

[1] Excludes pending supplemental appropriation estimates of $11,008,000.

The Committee recommends an appropriation of $38,107,000, an increase of $11,508,000 over the 1978 appropriations to date. The amount recommended is the same as the budget estimate and $38,107,000 over the amount allowed by the House.

The amount includes funds for continuing installments to finance unfunded liabilities created by Federal salary increases through October 1977, the extension of benefits to new groups of employees, and new or liberalized benefits paid from the fund, as well as Foreign Service normal costs not met by employee and employer contributions. The amount included in the bill is to cover the cost of employees of the Department of State and the International Communications Agency. Funds to cover employees of the Agency for International Development are included in the Foreign Assistance and Related programs appropriation bill.

International Organizations and Conferences

CONTRIBUTIONS TO INTERNATIONAL ORGANIZATIONS

1978 appropriations to date	[1] $325,979,000
1979 budget estimate	355,392,000
House allowance	----------
Committee recommendation	355,392,000

[1] Excludes pending supplemental appropriation estimates of $64,127,000.

The Committee recommends an appropriation of $355,392,000, an increase of $29,413,000 over the 1978 appropriations to date. The amount recommended is the same as the budget estimate and $355,392,000 over the amount allowed by the House.

This appropriation is for payment of the annual obligations of membership in certain international organizations as authorized by conventions, treaties, or specific acts of Congress. Membership in these

organizations may constitute an obligation for payment of the appropriate share of the assessed budgets of the organizations.

The following table shows the amount provided for each of the international organizations:

UNITED NATIONS AND SPECIALIZED AGENCIES:	
United Nations	$116,698,599
United Nations Educational, Scientific and Cultural Organization	30,833,625
International Civil Aviation Organization	8,003,145
World Health Organization	46,925,560
Food and Agricultural Organization	24,241,249
International Telecommunication Union	2,304,177
World Meterological Organization	2,997,033
Intergovernmental Maritime Consultative Organization	275,518
Universal Postal Union	409,114
World Intellectual Property Organization	296,003
International Atomic Energy Agency	14,502,760
Subtotal	247,486,783
INTER-AMERICAN ORGANIZATIONS:	
Inter-American Indian Institute	86,185
Inter-American Institute of Agricultural Sciences	9,258,801
Pan American Institute of Geography and History	200,000
Pan American Railway Congress Association	15,000
Pan American Health Organization	22,165,000
Organization of American States	32,741,500
Subtotal	64,466,486
REGIONAL OPERATIONS:	
South Pacific Commission	653,018
North Atlantic Treaty Organization	15,898,000
North Atlantic Assembly	307,671
Colombo Plan Council for Technical Cooperation	5,000
Organization for Economic Cooperation and Development	20,034,000
Subtotal	36,897,689
OTHER INTERNATIONAL ORGANIZATIONS:	
Interparliamentary Union	199,516
International Bureau of the Permanent Court of Arbitration	6,410
International Bureau for the Publication of Customs Tariffs	40,065
International Bureau of Weights and Measures	269,525
International Hydrographic Organization	30,335
International Coffee Organization	408,913
International Institute for the Unification of Private Law	41,061
Hague Conference of Private International Law	48,863
Maintenance of Certain Lights in the Red Sea	21,094
Bureau of International Exhibitions	14,276
Customs Cooperation Council	1,354,132
International Center for the Study of the Preservation and Restoration of Cultural Property	175,000
International Organization for Legal Metrology	45,610
International Agency for Research on Cancer	665,820
General Agreement on Tariffs and Trade	2,825,050
International Office for Epizootics	37,810
World Tourism Organization	121,985
International Tin Council	139,283
International Cotton Advisory Committee	50,160
International Rubber Study Group	19,853
International Seed Testing Association	3,281
Lead and Zinc Study Group	23,000
Subtotal	6,541,042
Total	355,392,000

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In fiscal year 1975 this Committee appropriated $203,903,000 for this account. This year the request for International Organizations has grown to $355,392,000. Over the past year the Committee has attempted to give the Bureau of International Organizations Affairs the oversight attention which it deserved. At this time it would appear that the performance of the Bureau has improved. For instance, the Bureau's personnel rotation policy seems to be improving, and officials of the Bureau may be taking a more positive leadership role in the various international agencies. It would appear that our U.N. representatives are starting to carry the message that the United States as the primary financial donor is determined that the size of the U.N. bureaucracy and its ever escalating salary structure be reduced. Evidence received at Committee hearings revealed that 35 U.N. executives drew larger salaries than the Vice President of the United States. Additionally, testimony was received to the effect that 17 of the world body's servants commanded more than the $75,000 per year paid to the Chief Justice of the United States. The Committee sees no reason why the American taxpayer should suffer the major burden of supporting an ever-growing international bureaucracy.

The Committee views with alarm the dispersal of U.N. funds, or serious thought of dispersal of U.N. funds, 25 percent of which are derived from the American taxpayer, to such countries as Vietnam, Cambodia, Laos, Uganda, Guinea, and Cuba. Additionally, we are exceedingly disturbed over the possibility of leakage of U.N. funds to Soviet sponsored terrorist guerrilla organizations operating in Africa. In the year to come the Committee fully intends to carefully observe the distribution of U.N. funds to communist sponsored terrorist organizations such as SWAPO. For instance, the Committee seriously questions why American tax dollars were used to fund the international travel and per diem expenses of SWAPO members and the Committee directs that this practice stop forthwith.

In conclusion, this Committee has repeatedly demanded improved controls over the technical assistance activities of the various agencies in the U.N. development system. Policies of the U.N. notwithstanding, it is the policy of the Congress of the United States which approves the funding contained in this bill, that technical assistance be under the control and supervision of the U.N. development program. As the primary financial benefactor of the U.N. system this Committee has no intention of subsidizing the over-zealous proliferation of technical assistance programs and an increased fragmentation of the U.N. Development System.

CONTRIBUTIONS FOR INTERNATIONAL PEACEKEEPING ACTIVITIES

1978 appropriations to date	[1] $27,000,000
1979 budget estimate	32,000,000
House allowance	
Committee recommendation	27,000,000

[1] Excludes pending supplemental appropriation estimates of $20,400,000.

The Committee recommends an appropriation of $27,000,000, the same as the 1978 appropriations to date. The amount recommended is $5,000,000 under the budget estimate and $27,000,000 over the amount allowed by the House.

The Committee is concerned about the U.S. assessment for maintaining these forces. The U.S. assessment for the United Nations and specialized agencies is limited to 25 percent of the budgets of those organizations, yet the U.S. assessment for the budget required to maintain these forces is 29.3 percent of the budget. The Department of State should endeavor to hold the United States assessment within the 25 percent ceiling applicable to the U.N. and specialized agencies.

MISSIONS TO INTERNATIONAL ORGANIZATIONS

1978 appropriations to date	[1] $10,144,000
1979 budget estimate	12,072,000
House allowance	
Committee recommendation	12,000,000

[1] Excludes pending supplemental appropriation estimates of $1,364,000.

The Committee recommends an appropriation of $12,000,000, an increase of $1,856,000 over the 1978 appropriations to date. The amount recommended is $72,000 under the budget estimate and $12,000,000 over the amount allowed by House; and will support a total of 212 permanent positions.

The amount recommended provides for the expenses of eight U.S. missions to international organizations and the expenses of congressional delegations to four international parliamentary groups. The amount recommended is $1,856,000 more than the appropriation to date for the current fiscal year, but is $72,000 less than the amount requested. The increase over the current appropriation is primarily to cover increased workload at the mission to the United Nations and wage and price increases.

The following table shows the amount recommended for each of the missions and congressional groups:

U.S. Missions to:	
United Nations	$4,037,000
International Organizations, Geneva	4,700,000
International Organizations, Vienna	1,036,000
International Civil Aviation Organization	290,000
Organization of American States	914,000
United Nations Educational, Scientific and Cultural Organization	420,000
The Food and Agriculture Organization	210,000
United Nations Environment Program	143,000
Subtotal	11,805,000
U.S. Congressional groups to:	
Interparliamentary Union	100,000
North Atlantic Assembly	50,000
Canada-U.S. Interparliamentary Group	50,000
Mexico-U.S. Interparliamentary Group	50,000
Subtotal	250,000
Total	12,000,000

INTERNATIONAL CONFERENCES AND CONTINGENCIES

1978 appropriations to date	$8,000,000
1979 budget estimate	8,600,000
House allowance	
Committee recommendation	8,000,000

The Committee recommends an appropriation of $8,000,000, the same as the 1978 appropriations to date. The amount recommended is $600,000 under the budget estimate and $8,000,000 over the amount allowed by the House.

The Committee is very much concerned about the proliferation of international conferences in which the U.S. Government participates and the number of delegates who attend these conferences. This concern is particularly well founded in view of Secretary Vance's memorandum of April 18, 1977 on policies governing U.S. delegations to international conferences and meetings which seeks to reduce the size of these delegations. Accordingly, the Committee directs the Department to scrutinize carefully the need for U.S. participation in each projected international conference and to examine closely the list of U.S. delegates to all such conferences with a view to controlling and minimizing our participation.

The Committee is aware that there are carryover funds amounting to approximately $1,600,000 of which $600,000 can be properly used in addition to the recommended appropriation.

INTERNATIONAL TRADE NEGOTIATIONS

1978 appropriations to date	[1] $3,800,000
1979 budget estimate	4,717,000
House allowance	
Committee recommendation	4,717,000

[1] Excludes pending supplemental appropriation estimates of $497,000.

The Committee recommends an appropriation of $4,717,000, an increase of $917,000 over the 1978 appropriations to date. The amount recommended is $4,717,000 over the amount allowed by the House; and will support a total of 62 permanent positions.

The Committee has provided the full amount requested, to continue participation in Multilateral Trade Negotiations (MTN) conducted under the General Agreement on Tariffs and Trade (GATT). The increase of $917,000 over the current amount is provided to cover overseas wage and price increases.

The Committee recommends that the Department and Office of Management and Budget consider the merger of this appropriation with that of the Office of the Special Representative for Trade Negotiations.

INTERNATIONAL COMMISSIONS

INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO

SALARIES AND EXPENSES

1978 appropriations to date	[1] $6,300,000
1979 budget estimate	6,840,000
House allowance	
Committee recommendation	6,800,000

[1] Excludes pending supplemental appropriation estimates of $320,000.

The Committee recommends an appropriation of $6,800,000, an increase of $500,000 over the 1978 appropriations to date. The amount recommended is $40,000 under the budget estimate and $6,800,000 over

the amount allowed by the House; and will support a total of 298 permanent positions.

The amount recommended will finance the operating costs of the U.S. section, including general administration, engineering, and the U.S. share of operation and maintenance of nine completed international projects along the boundary between the United States and Mexico.

CONSTRUCTION

1978 appropriations to date	$17,000,000
1979 budget estimate	3,968,000
House allowance	
Committee recommendation	3,900,000

The Committee recommends an appropriation of $3,900,000, a decrease of $13,100,000 under the 1978 appropriations date. The amount recommended is $68,000 under the budget estimate and $3,900,000 over the amount allowed by the House.

The amount recommended includes $3,900,000 for "Construction" to provide the amounts necessary for completion of the 1970 Boundary Treaty project and for continuation of construction of the hydroelectric powerplant at Amistad Dam. This amount reflects a reduction of $13,100,000 from the current appropriation, due primarily to nonrecurring construction costs associated with the Tijuana River Flood Control project and the Amistad Dam Power Plant project.

AMERICAN SECTIONS, INTERNATIONAL COMMISSIONS

1978 appropriations to date	[1] $2,232,000
1979 budget estimate	2,553,000
House allowance	
Committee recommendation	2,500,000

[1] Excludes pending supplemental appropriation estimates of $56,000.

The Committee recommends an appropriation of $2,500,000, an increase of $268,000 over the 1978 appropriations to date. The amount recommended is $53,000 under the budget estimate and $2,500,000 over the amount allowed by the House; and will support a total of 32 permanent positions.

The International Boundary Commission maintains boundary markers along the United States-Canadian border in accordance with existing treaties and establishes and preserves boundary vistas by periodic tree cutting and vegetation control.

The International Joint Commission conducts investigations of boundary waters for the regulation of levels and flows of water, pollution abatement, water quality control, and related matters of mutual concern to the United States and Canada.

INTERNATIONAL FISHERIES COMMISSIONS

1978 appropriations to date	[1] $5,745,000
1979 budget estimate	6,612,000
House allowance	
Committee recommendation	6,600,000

[1] Excludes pending supplemental appropriation estimates of $519,000.

The Committee recommends an appropriation of $6,600,000, an increase of $855,000 over the 1978 appropriations to date. The amount

recommended is $12,000 under the budget estimate and $6,600,000 over the amount allowed by the House.

The sum of $6,600,000 is recommended in the bill to cover the U.S. shares of expenses of eight international fisheries commissions, the International Council for the Exploration of the Sea, and expenses of the U.S. commissioners. The increase over the current appropriation is provided primarily to cover salary and price increases.

The amount provided for each of the organizations is shown in the following table:

International Pacific Halibut Commission	$490,200
International Pacific Salmon Fisheries Commission	795,300
Inter-American Tropical Tuna Commission	1,607,200
International Whaling Commission	13,000
Internationa North Pacific Fisheries Commission	67,000
Great Lakes Fishery Commission	3,486,700
North Pacific Fur Seal Commission	5,000
International Commission for the Conservation of Atlantic Tunas	74,800
International Council for the Exploration of the Sea	37,600
Expenses of the United States Commissioners	23,200
Total	6,600,000

TITLE II—DEPARTMENT OF JUSTICE

General Administration

SALARIES AND EXPENSES

1978 appropriations to date	[1] $26,067,000
1979 budget estimate	28,996,000
House allowance	
Committee recommendation	27,774,000

[1] Excludes pending supplemental appropriation estimates of $1,515,000.

The Committee recommends an appropriation of $27,774,000, an increase of $1,707,000 over the 1978 appropriations to date. The amount recommended is $1,222,000 under the budget estimate and $27,774,000 over the amount allowed by the House; and will support a total of 820 permanent positions.

The amount recommended includes funds for nondiscretionary increases, primarily for pay and related benefits. Also included are funds for 5 additional positions in the Office of Management and Finance, 12 additional positions for the Parole Board, funds for increased travel expenses connected with Judicial Nominating Committees, and funds for additional staff years in the Office of Public Information and Improvements in the Administration of Justice. The Committee has reduced the allocation for the Federal justice research program to $1,000,000.

Legal Activities

SALARIES AND EXPENSES, GENERAL LEGAL ACTIVITIES

1978 appropriations to date	[1] $77,520,000
1979 budget estimate	89,884,000
House allowance	
Committee recommendation	89,884,000

[1] Includes supplemental appropriations of $1,445,000 but excludes pending supplemental appropriation estimates of $4,457,000.

The Committee recommends an appropriation of $89,884,000, an increase of $12,364,000 over the 1978 appropriations to date. The amount recommended is the same as the budget estimate and $89,884,000 over the amount allowed by the House; and will support a total of 2,727 permanent positions.

The amount recommended provides for the full 2,727 positions requested for the various legal divisions of the Department. The Committee was impressed by the testimony regarding the additional workload imposed on the Land and Natural Resources Division by recent legislation and has added 35 positions to the number requested. The full number of additional positions requested are also recommended for the Tax, Civil, and Civil Rights Divisions. The following table displays the current level of positions as well as the number requested and allowed by the Committee:

DISTRIBUTION OF POSITIONS

Comparison by activities:	1978 appropriation	1979 request	Committee recommendation
Conduct of Supreme Court proceedings and review of appellate matters	47	47	47
General tax matters	493	574	574
Criminal matters	704	752	717
Claims, customs and general civil matters	557	631	631
Land, natural resources and Indian matters	248	263	258
Legal opinions	39	42	42
Civil rights matters	398	418	418
Total requirements	2,486	2,727	2,727

The Committee is concerned that certain temporary regulations affecting Justice Department access to individual tax returns in nontax criminal cases, remain in effect 2 years after passage of the Tax Reform Act of 1976. Under section 1202 of that act, tax information for nontax criminal purposes cannot be disclosed to the Justice Department without a court order. The temporary regulations permit Justice Department access and therefore subvert the law. The Committee directs that no funds should be used by the Justice Department in implementing the temporary regulations under section 404.6103(h)(2)–1(a)(2) of the Treasury Temporary Regulations on Procedure and Administration.

PRIVATE COUNSEL FEES

The Committee has provided no funding for private counsel fees. In the event that any such fees are required, the Committee directs the Department to submit a reprograming request before any funds are expended.

SALARIES AND EXPENSES, ANTITRUST DIVISION

1978 appropriations to date	[1] $41,008,000
1979 budget estimate	46,377,000
House allowance	
Committee recommendation	46,377,000

[1] Includes supplemental appropriations of $1,223,000 but excludes pending supplemental appropriation estimates of $2,227,000.

The Committee recommends an appropriation of $46,377,000, an increase of $5,369,000 over the 1978 appropriations to date. The amount recommended is the same as the budget estimate and $46,377,000 over the amount allowed by the House; and will support a total of 977 permanent positions.

The increase over the current appropriation will provide for nondiscretionary increases as well as funds requested for program increases. These include 27 additional positions to improve management and administrative capabilities, and 30 additional positions for legislative support, research, and analysis, and regulatory activities. In addition, funds are included for support of cases involving private conspiratorial conduct such as price fixing and for extraordinary litigating expenses associated with the A.T. & T. and IBM cases.

This appropriation includes $10,000,000 for grants to States to improve their antitrust enforcement capabilities. The sum of $1,000,000 was appropriated for fiscal year 1977 and $10,000,000 for fiscal year

1978. Under this program, grants are made pursuant to State plans, which provide for administration by the State attorney general and set forth an antitrust training program for State officials.

SALARIES AND EXPENSES, U.S. ATTORNEYS AND MARSHALS

1978 appropriations to date	[1] $179,075,000
1979 budget estimate	196,736,000
House allowance	
Committee recommendation	196,700,000

[1] Excludes pending supplemental appropriation estimates of $11,495,000.

The Committee recommends an appropriation of $196,700,000, an increase of $17,625,000 over the 1978 appropriations to date. The amount recommended is $36,000 under the budget estimate and $196,700,000 over the amount allowed by the House; and will support a total of 6,085 permanent positions.

The amount recommended includes funds for nondiscretionary increases, primarily related to pay and related benefits, and an increase in the standard level user charges for space.

The amount recommended includes funds for 61 additional positions requested for the U.S. attorneys. These positions, most of which will be paralegals, will enable the U.S. attorneys to handle more civil cases, prosecute more white collar and other criminal cases and improve the quality of appellate work.

The funds recommended will also allow a net increase of 83 additional positions for the U.S. Marshals Service. These additional positions are provided to help alleviate the increased workload in the handling of Federal prisoners, provide security protection for judges and magistrates, and assume increased responsibilities in the supervision of unsentenced prisoners.

This chronic shortage of manpower is also reflected in an excessive reliance by the Marshals Service on part-time nonprofessional personnel as replacements when regular Deputy Marshals are unavailable. These temporary "guards", as they are called, lack the specialized training, expertise, and professionalism that a full-time Deputy Marshal possesses. It follows that the Service's performance, to the extent that it is forced to employ minimally qualified individuals, will suffer.

Nowhere are these manifestations of understaffing more in evidence than in district 8, which because of its location on the Southwestern border, has become the focus of an intensifying Federal law enforcement effort. Thus, for example, during a recent month, 37 individuals were employed as temporary guards in district 8. Of even greater significance, fully seven of these individuals accumulated 140 or more hours of work during that month. Moreover, despite the postponement of some of the less urgent work items in the district's work load, the Deputy Marshals have accumulated over 5,000 hours of overtime since January 1, 1978.

By these indices alone, it is clear that the work load in district 8 is sufficient to require several additional Deputies. The Committee therefore directs the Service to assign no fewer than 3 of the additional Deputy positions authorized in this bill to district 8.

The Committee is also concerned about the shortage and misallocation of clerical staffing within the U.S. Marshals Service. Again, district 8 provides a clear illustration of the problems. A review of the

Service's clerical staffing pattern has revealed surpluses in some jurisdictions and shortages in others. The Service proposes to correct these imbalances by redistributing positions as attrition in overstaffed jurisdictions permits. Generally speaking, this appears to be a reasonable and humane approach. However, it was almost 2 years ago that the 8th district was informed that it would be receiving two additional clerical positions. Granted the process of reallocation by attrition is time-consuming and uncertain, the Committee nonetheless expects that the Service will fill the two clerical vacancies in district 8 no later than August 30, 1978.

The Committee is concerned about excessive amounts of overtime performed by employees in the U.S. Marshals Service and recommends approval of the additional positions requested to offset overtime work. The Marshals Service should endeavor to reduce such overtime to the absolute minimum necessary in the performance of duty.

SUPPORT OF UNITED STATES PRISONERS

1978 appropriations to date	$21,000,000
1979 budget estimate	25,100,000
House allowance	
Committee recommendation	25,100,000

The Committee recommends an appropriation of $25,100,000, an increase of $4,100,000 over the 1978 appropriations to date. The amount recommended is the same as the budget estimate and $25,100,000 over the amount allowed by the House.

The 1978 appropriation for the Department of Justice reflected the transfer of certain responsibilities dealing with U.S. prisoners from the Federal Prison System to the U.S. Marshals Service. Under this program the Marshals Service now has fiscal and operational responsibilities for the care, custody, and medical needs of all unsentenced Federal prisoners and prisoners awaiting transfer to correctional institutions up to 30 days after sentencing. Contracts are made with State and local authorities for the use of approximately 1,200 jail facilities to house such prisoners.

FEES AND EXPENSES OF WITNESSES

1978 appropriations to date	$20,050,000
1979 budget estimate	20,144,000
House allowance	
Committee recommendation	20,000,000

The Committee recommends an appropriation of $20,000,000, a decrease of $50,000 under the 1978 appropriations to date. The amount recommended is $144,000 under the budget estimate and $20,000,000 over the amount allowed by the House.

This appropriation includes funds for expert and fact witnesses who appear on behalf of the Government in all cases to which the United States is a party; the protection of witnesses; and costs for mental competency examinations.

SALARIES AND EXPENSES, COMMUNITY RELATIONS SERVICE

1978 appropriations to date	$5,192,000
1979 budget estimate	5,353,000
House allowance	
Committee recommendation	5,353,000

The Committee recommends an appropriation of $5,353,000, an increase of $161,000 over the 1978 appropriations to date. The amount recommended is the same as the budget estimate and $5,353,000 over the amount allowed by the House; and will support a total of 136 permanent positions.

The funds appropriated for Community Relations Service, which was established by title X of the Civil Rights Act of 1964, provide assistance in resolving disputes, disagreements, and difficulties arising from discriminatory practices which disrupt peaceful relations among citizens. The increase reflects funds requested for nondiscretionary increases offset by a program decrease involving 10 positions. Justification material presented to the Committee indicated that the decrease would not substantially affect the current program level due to increased staff effectiveness and efficiency.

Federal Bureau of Investigation

Salaries and Expenses

1978 appropriations to date	[1] $529,454,000
1979 budget estimate	556,750,000
House allowance	
Committee recommendation	558,750,000

[1] Excludes pending supplemental appropriation estimates of $24,500,000.

The Committee recommends an appropriation of $558,750,000, an increase of $29,296,000 over the 1978 appropriations to date. The amount recommended is $2,000,000 over the budget estimate and $558,750,000 over the amount allowed by the House; and will support a total of 19,775 permanent positions.

The Federal Bureau of Investigation is the principal investigative arm of the Department of Justice. It collects evidence for use in civil litigation and prosecution of the violators of Federal criminal statutes. It has primary responsibility for the internal security of the Nation. It assists other law enforcement agencies through the dissemination of information, location of fugitives, training, identification, and laboratory services.

The Committee believes that the reductions made in certain programs by the Administration were too severe and would be detrimental to an effective Federal law enforcement effort. The Committee pursuant to authorizations by the Senate Judiciary Committee hereby provides $1 million (40 permanent positions) over the budget request to augment Headquarters management and coordination of domestic security and terrorism activities, and $1 million (40 permanent positions) over the request for domestic security and terrorism investigations. At a time when acts of terrorism are increasing throughout the world, the Federal Bureau of Investigation should not reduce its capability to handle such situations in the United States to the extent recommended in the administration budget. The Committee believes that restoration of these funds and positions are necessary to provide for efficient and effective coordination of this program and to respond to terrorist incidents under the jurisdiction of the Federal Bureau of Investigation.

The Committee is concerned about the ability of the FBI to adequately manage and coordinate its investigative operations in view of the substantial reductions made to this program by the administration. The Committee is not at this time recommending full restoration of funds for this program, however, because it was not provided for in the authorization bill but will follow the program to insure that the Nation's law enforcement effort is not damaged because of the reduced funding.

Immigration and Naturalization Service

SALARIES AND EXPENSES

1978 appropriations to date	[1] $266,450,000
1979 budget estimate	298,019,000
House allowance	
Committee recommendation	299,800,000

[1] Excludes pending supplemental appropriation estimates of $16,637,000.

The Committee recommends an appropriation of $299,800,000, an increase of $33,350,000 over the 1978 appropriations to date. The amount recommended is $1,781,000 over the budget estimate and $299,800,000 over the amount allowed by the House; and will support a total of 10,997 permanent positions.

These funds will be used for administering and enforcing the laws of the United States relating to immigration, naturalization and alien registration. The Committee held several extensive executive sessions and as a result determined that far too many Soviet Bloc Intelligence Service personnel have been admitted entry into the United States. Therefore, the Committee directs that the Immigration and Naturalization Service under the guidance, control, and supervision of the Attorney General deny entry and enforce expulsion of hostile intelligence service personnel irrespective of visas issued by, or policies of, the Department of State.

The Committee has closely followed the efforts of the Service in its endeavors to become current with its workload. While the new machinery and procedures have indeed been helpful, the basic problem is a shortage of personnel. The INS is currently authorized a staff of 10,071 permanent positions but erosion in the personnel compensation base over the years has left only enough to maintain an average staff of 9,363 positions. The Committee has included $3,348,000 in the bill to reduce the lapse rate from 7 percent to 5 percent.

There has long been a need to improve service in the Carolinas which are presently served by the Norfolk and Atlanta district offices. The Committee has provided an additional 23 positions (that will be supplemented by 5 positions now assigned to Atlanta) and $684,000 to establish a new district office at Charlotte, N.C.

The Committee supports the 903 additional positions requested in the budget but has to provide for them on a 50 percent lapse basis in order to stay within the amount proposed to be authorized for 1979. These additional positions are distributed as follows:

Inspections program	200
Border patrol program	293
Investigations program	155
Intelligence program	8
Training program	4
Records and data systems enhancement program	240
Program direction	3

The Committee has approved all of the funds associated with the additional positions except for the $264,000 requested for the leasing of a third helicopter for the border prevention program.

The Committee expects next year's budget to include sufficient funds to maintain an average of 95 percent of the 10,997 permanent positions authorized.

BORDER PATROL

The Committee continues to be concerned with the spreading incidence of theft, burglary, and other criminal acts in the wake of the rising tide of illegal immigration across our Southwestern border. Security of person and property is becoming more and more problematical in many communities along the border. Anger and frustration are building and the situation is becoming increasingly volatile. Already there are signs of the potential for direct action and the likelihood of an untoward incident is growing.

Among the communities that have been most seriously affected by these developments are Yuma, Douglas, Naco, Bisbee, and Bisbee Junction, Arizona. The Committee therefore directs that, of the 293 additional Border Patrol positions funded for fiscal year 1979, the Immigration and Naturalization Service allocate no fewer than 20 to the Yuma sector and no fewer than 12 to the Tucson sector. It is anticipated that the 12 positions designated for the Tucson sector will be used to augment the Border Patrol's presence in the areas surrounding Douglas, Naco, Bisbee, and Bisbee Junction.

Furthermore, the Committee has approved, subject to an appropriate increase in the amount authorized for the INS, $1,950,000 for the installation of gates on the bridges across the salinity canal and the construction of a fence along the border in the vicinity of San Luis, Arizona. No one on the Committee supposes that fencing is a solution to the problem of illegal immigration and the heightened crime rate associated therewith. Strategically placed, however, a substantial fence can help to channel those who cross the border illegally into areas where apprehension is more readily effected. Also, the physical barrier posed by the fence will assist in deterring those who enter the United States from perpetrating criminal offenses, and escaping back into Mexico with stolen property. It will thus provide a measure of reassurance to citizens along the border whose security and well-being are now in jeopardy.

Drug Enforcement Administration

SALARIES AND EXPENSES

1978 appropriations to date	[1] $181,895,000
1979 budget estimate	192,953,000
House allowance	192,953,000
Committee recommendation	192,953,000

[1] Excludes pending supplemental appropriation estimates of $6,600,000.

The Committee recommends an appropriation of $192,953,000, an increase of $11,058,000 over the 1978 appropriations to date. The amount recommended is the same as the budget estimate and the same as the amount allowed by the House; and will support a total of 4,213 permanent positions.

The Drug Enforcement Administration was established by Reorganization Plan No. 2 of 1973 and came into being on July 1, 1973. The mission of DEA is to provide a leadership role in the suppression of narcotic and dangerous drugs at the national and international level, and to enforce the controlled substances laws, thereby restricting the aggregate supply of drugs.

The Administrator of the Drug Enforcement Administration indicated that there would be no reduction in services as a result of the recent regional reorganization. The Committee is pleased with this assurance and feels that each State should continue to be serviced primarily by personnel assigned to the district in which the State is now located.

The increase is to cover nondiscretionary increases proposed in the budget, primarily dealing with pay and related benefits.

Federal Prison System

SALARIES AND EXPENSES, BUREAU OF PRISONS

1978 appropriations to date	[1] $259,576,000
1979 budget estimate	[2] 312,179,000
House allowance	
Committee recommendation	315,200,000

[1] Excludes pending supplemental appropriation estimates of $10,000,000.
[2] Includes budget amendment of reducing the initial estimate by $3,300,000 transmitted in Senate Document 95-106.

The Committee recommends an appropriation of $315,200,000, an increase of $55,624,000 over the 1978 appropriations to date. The amount recommended is $3,021,000 over the budget estimate and $315,200,000 over the amount allowed by the House; and will support a total of 9,406 permanent positions.

The amount recommended will provide for the following program changes:

Activation of the Otisville, N.Y., and Talladega, Ala., Federal Correctional Institution and the camps at El Reno, Okla.; Texarkana, Tex.; and Danbury, Conn.; activation of a detention unit at Miami, Fla., and the expansion of a farm camp at Leavenworth, Kans.;

Establishment of two new minimum security camps; a 250 bed facility on a former military base at Boron, Calif., which can later be expanded to 500 beds by additional construction, and a 500 bed facility on a former Air Force base at Big Springs, Tex.;

Population increase at existing institutions—fiscal year 1978 budget provided for average inmate population of 27,500; average population expected in fiscal year 1979 is 31,500; expansion of functional unit management; improvement of institutional security; expansion of medical coverage; continuation of on-line automated data processing system to provide location and status information; transfer of vocational training programs from Federal Prison Industries, Inc.; and expansion of contract confinement and contract community center programs.

The amount recommended by the Committee also includes funds for nondiscretionary increases, primarily associated with pay and related benefits and the increased cost of utilities.

UTILIZATION OF MILITARY INSTALLATIONS

The Committee has expressed its concern with the construction of additional Federal correctional facilities in light of the large number of facilities that are underutilized at military installations and the lack of progress in making these facilities available to the Bureau of Prisons to meet housing needs. The Committee was pleased to learn of the availability of the former installations at Boron, Calif. and Big Springs, Tex. as sites for prison facilities, which represents real progress toward alleviating the terrible 30.4 percent overcrowding in the prisons while at the same time reducing the economic impact on communities experiencing base closings. During hearings the Attorney General indicated that the Director of the Bureau of Prisons would be his representative on the President's recently revitalized Economic Adjustment Committee. The Committee expects the Departments of Defense and Justice to work together to insure that both active and surplus Federal facilities are being used in the most efficient manner. The Committee intends to follow this matter closely with both Departments and expects further efforts to utilize facilities at active and former military bases.

NATIONAL INSTITUTE OF CORRECTIONS

1978 appropriations to date	$9,900,000
1979 budget estimate	9,943,000
House allowance	
Committee recommendation	9,920,000

The Committee recommends an appropriation of $9,920,000, an increase of $20,000 over the 1978 appropriations to date. The amount recommended is $23,000 under the budget estimate and $9,920,000 over the amount allowed by the House, and will support a total of 32 permanent positions.

This program is carried out primarily through contracts and grants to educational institutions, units of State and local government, and public and private agencies and organizations. The objective of the program is to work with State and local governments in developing and training their corrections staffs, in supporting research to improve corrections programs, and in serving as a clearinghouse for information about improvements in corrections.

BUILDING AND FACILITIES

1978 appropriations to date	$38,850,000
1979 budget estimate	37,080,000
House allowance	
Committee recommendation	35,280,000

The Committee recommends an appropriation for $35,280,000, a decrease of $3,570,000 under the 1978 appropriations to date. The amount recommended is $1,800,000 under the budget estimate and $35,280,000 over the amount allowed by the House; and will support a total of 37 permanent positions.

The amount recommended includes funds for construction of a combination Federal correctional institution and Federal detention

center to be located near Phoenix, Ariz. This facility is to alleviate a critical shortage of detention facilities in the Phoenix area. The Committee recommendation also includes funds for rehabilitation of utilities systems at existing institutions and for rehabilitation of existing structures.

The Committee has not approved the $2,600,000 requested for planning and site acquisition of a new west coast correctional facility. The Committee believes that the changes in the prison population obviate the need for this type of facility. The opening of the facility at the former military installation at Boron, California, plus another minimum security facility in the Northwestern region of the Nation, will enable the Bureau to close the McNeil Island, Washington, penitentiary by the end of 1982.

In the 1978 appropriation $425,000 was included as the first increment for a new food service facility at the Federal prison camp at Eglin Air Force Base in Florida. The amount recommended for fiscal year 1979 includes $350,000 as the second and final increment of funds for the food service facility at Eglin.

As discussed earlier under salaries and expenses, the Committee has provided funds for the establishment of two new minimum security facilities on former military installations. The amount of $800,000 has been added to the budget request for this appropriation for the fencing and other minor improvements necessary to open these critically needed facilities.

The Committee is concerned about the excessive cost of construction for housing prisoners. The Bureau of Prisons estimates its construction cost at about $35,000 per bed. In some instances the cost has been considerably higher. The Committee feels that the Department and the Bureau should endeavor to find some alternative for providing housing at less cost per prisoner. At Committee hearings with the Attorney General, it was indicated that a Federal corrections policy task force had been established to develop a comprehensive strategy that would emphasize intergovernmental cooperation. It was also indicated that the task force would investigate potential collaborative approaches to the care and custody of prisoners at the State and Federal level. The Committee expects the Department to proceed with those efforts and to report to the Committee by December 31, 1978. The Committee also expects the Department to explore and report on new directions for dealing with the issue of prison population.

The Committee understands that there have been problems with Los Angeles County in contracting for the housing of Federal prisoners and that the County has indicated that it does not intend to renew such contracts when they expire next year. The Department should report to the Committee by not later than December 31, 1978 on how it plans to deal with this problem.

FEDERAL PRISON INDUSTRIES, INC.

The bill includes the usual language authorizing the Federal Prison Industries, Inc. to make expenditures, contracts, and commitments necessary for carrying out the programs set forth in the 1979 budget. This is done in accordance with section 104 of the Governmental Corporation Control Act.

LAW ENFORCEMENT ASSISTANCE ADMINISTRATION

SALARIES AND EXPENSES

1978 appropriations to date	[1] $644,582,000
1979 budget estimate	[2] 651,488,000
House allowance	641,488,000
Committee recommendation	661,488,000

[1] Includes a reduction of $2,668,000 derived through transfer but excludes pending supplemental appropriation estimates of $1,525,000.
[2] Includes budget amendment of $10,000,000 transmitted in Senate Document 95-103.

The Committee recommends an appropriation of $661,488,000, an increase of $16,906,000 over the 1978 appropriations to date. The amount recommended is $10,000,000 over the budget estimate and $20,000,000 over the amount allowed by the House; and will support a total of 697 permanent positions.

The appropriation covers the grants, contracts, loans and other assistance authorized by title I of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, and by title II of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended.

The Committee has added $20,000,000 to the budget request for part B planning grants in order to maintain the current level of $50,000,000. $7,000,000 is for the community anticrime program, $25,000,000—plus $15,000,000 from carryover funds—is for the law enforcement education program, and $100,000,000 is for the juvenile justice and delinquency prevention program. The Committee feels that the planning grants for States should not be reduced since State legislatures did not have adequate time to consider the question of maintaining current levels through greater State contributions. The allowance also provides $10,000,000 for the new Urban Crime Prevention program announced by the President in his urban message of March 27, 1978.

The Committee directs LEAA to make special efforts to address the needs of Indian tribes through discretionary funds, notwithstanding the definition of "unit of general local government" contained in the Crime Control Act of 1973 as amended.

The following table compares the amounts requested with the House allowance and the Committee's recommendation:

LAW ENFORCEMENT ASSISTANCE ADMINISTRATION

[In thousands of dollars]

Budget activity	Fiscal year 1979 President's budget	Application of House allowance	Application of Senate committee recommendation
1. Direct assistance (formula grants):			
Planning formula grants	$30,000	$50,000	$50,000
Corrections formula grants	33,659	30,559	33,659
Juvenile justice formula grants	63,750	63,750	63,750
Criminal justice formula grants	268,957	256,557	268,957
2. Collateral assistance:			
Criminal justice programs	44,773	44,773	45,559
Correctional programs	29,849	29,849	31,563
Juvenile justice programs:			
Special emphasis	21,250	21,250	21,250
Juvenile justice institute	11,000	11,000	11,000
Technical assistance	3,000	3,000	3,000
Concentration of Federal effort	1,000	1,000	1,000
Total, juvenile justice	36,250	36,250	36,250
Urban crime prevention	10,000	----------	10,000
Community anticrime programs	7,000	15,000	7,000
Technical assistance	12,000	12,000	12,000
Educational assistance and special training programs:			
LEEP	25,000	25,000	25,000
Educational development	500	500	500
Internship	250	250	250
Sec. 402 training	3,168	3,168	3,168
Sec. 407 training	250	250	250
Total, educational assistance	29,168	29,168	29,168
National Institute of Law Enforcement and Criminal Justice	25,000	25,000	25,000
Data systems and statistical assistance	21,290	21,290	21,290
3. Public safety officers' benefits program	15,000	2,500	2,500
4. Management and operations	24,792	24,792	24,792
Total	651,488	641,488	661,488

SUPPORT OF MULTI-STATE STRIKE FORCES

The fundamental congressional purpose underlying the establishment of the Law Enforcement Assistance Administration was to strengthen the law enforcement capabilities of the states and their local subdivisions by providing technical support and encouraging the development and more rapid diffusion of relevant organizational, ad- that this objective constitutes one of the most important reasons for the existence of the agency.

One of the most promising examples of an innovative approach to the problems of law enforcement in a Federal setting is the multi-State strike force concept. The strike force, comprising representatives of agencies in both the Federal Government and the participating States, offers an institutional framework within which a concerted and unified enforcement strategy can be forged and implemented. It thus provides the vehicle for overcoming many of the horizontal and vertical impediments to effective law enforcement inherent in a fragmented, multitiered governmental system. A concept that is more consistent with LEAA's stated goals would be hard to imagine. It is therefore exceptionally distressing to find that some segments of LEAA officialdom have decided to deny further financial support for existing and proposed multi-State strike forces, even though such a decision represents an unequivocal breach of faith with the affected States and local units.

The Committee is pleased by recent signs that LEAA will alter its policy and attitude regarding multi-State projects.

TITLE III—DEPARTMENT OF COMMERCE

General Administration

SALARIES AND EXPENSES

1978 appropriations to date	[1] $15, 750, 000
1979 budget estimate	23, 172, 000
House allowance	24, 335, 000
Committee recommendation	25, 025, 000

[1] Excludes pending supplemental appropriation estimates of $1,500,000.

The Committee recommends an appropriation of $25,025,000, an increase of $9,275,000 over the 1978 appropriations to date. The amount recommended is $1,853,000 over the budget estimate and $690,000 over the amount allowed by the House; and will support a total of 587 permanent positions.

This appropriation provides for the funding of the Office of the Secretary and Assistant Secretaries, and the staff offices which assist in the formation of policy, general management and administration of the Department. In addition to certain nondiscretionary cost increases, the amount recommended will provide for additional staff for the full amount requested for policy development, program evalaution, equal employment opportunity programs and increased audits.

SPECIAL INITIATIVES FUND

The Committee recommendation also provides $2,000,000, which was not requested in the budget, for a Secretary's special initiatives fund. The Committee intends that this amount be used for special initiatives of the Secretary or emergencies of departmentwide concern which could not be foreseen when the budget was presented to the Congress. This sum was derived from the amounts requested for the major bureaus and agencies within the Department. The funds recommended in the bill for those bureaus and agencies reflect the transfer of the following amounts to this appropriation:

Appropriation	*Amount*
Bureau of the Census: Salaries and expenses	$180, 000
Economic Development Administration: Administration of economic development assistance programs	110, 000
Industry and Trade Administration: Operations and administration	210, 000
Office of Minority Business Enterprise: Minority business development	150, 000
National Oceanic and Atmospheric Administration: Operations, research, and facilities	500, 000
Patent and Trademark Office: Salaries and expenses	400, 000
Scientific and Technical Research and Services	300, 000
Maritime Administration: Operations and training	150, 000
Total	2, 000, 000

This new system replaces the Secretary's reserve which was in effect for several years and was comprised of assessments placed upon the funds of the bureaus and agencies by the Office of the Secretary.

The Committee believes that the bureaus and agencies in the Department have sufficient funds to meet their own unforeseen requirements. However, the Committee is also cognizant of the need of the Secretary to have sufficient funding available to deal with emergency situations and important national problems which are properly the concern of the Department of Commerce. The Committee believes its proposal will meet this need and insure accountability and control of appropriated funds. In this regard, the Committee expects to be kept informed of the projects and programs financed from this fund. With regard to bureau reserves set aside to meet unforeseen requirements throughout the fiscal year, the Committee strongly endorses the efforts of the Office of the Secretary to monitor and review the use of such reserves closely for compliance with the Committee's reprogramming policy stated earlier in this report.

The Committee has not provided for the request for the Office of Cultural Affairs but would not object to a reprograming proposal to fund the 3 additional positions and $93,000 requested from the Special Initiatives Fund.

CONGRESSIONAL AFFAIRS

During the current fiscal year the Department reorganized the Office of the Assistant Secretary for Congressional Affairs. The enlarged staff is being supported by reimbursements from bureaus and offices and continuation of that funding method was proposed for 1979. The Committee has added $262,000 to this appropriation to eliminate the necessity for transfers and has made the following offsetting reductions to the requests of the appropriate accounts of the bureaus and agencies:

Appropriation	*Amount*
Bureau of the Census: Salaries and expenses	$33,000
Economic Development Administration: Administration of economic development assistance programs	33,000
Industry and Trade Administration: Operations and administration	33,000
Office of Minority Business Enterprise: Minority business development	33,000
National Oceanic and Atmospheric Administration: Operations, research, and facilities	64,000
Scientific and Technical Research and Services	33,000
Maritime Administration: Operation and training	33,000
Total	262,000

SPECIAL FOREIGN CURRENCY PROGRAM

1978 appropriations to date	
1979 budget estimate	$500,000
House allowance	
Committee recommendation	

The Committee has not allowed the $500,000 requested in the budget for the special foreign currency program which supplements activities of the Industry and Trade Administration, the National Oceanic and Atmospheric Administration and the National Bureau of Standards. Special foreign currency programs utilize foreign currencies instead of U.S. dollars and these currencies must be excess to the normal requirements of the United States. After a congressional appropriation has been obtained for special foreign currency program, authority to

utilize these funds in the form of reservation certificates must be obtained from the Treasury.

The $500,000 requested for the special foreign currency program for 1979 was for the National Bureau of Standards to provide $150,000 for foreign language translation of technical material and $350,000 for a foreign technical grants program. In view of the history of carryover balances for this program and the prospect of continued availability of such balances for 1979, the Committee sees no need at this time to appropriate additional funds.

Bureau of the Census

SALARIES AND EXPENSES

1978 appropriations to date	[1] $45,235,000
1979 budget estimate	50,745,000
House allowance	48,594,000
Committee recommendation	49,835,000

[1] Includes supplemental appropriations of $7,000,000 but excludes pending supplemental appropriation estimates of $2,450,000.

The Committee recommends an appropriation of $49,835,000, an increase of $4,600,000 over the 1978 appropriations to date. The amount recommended is $910,000 under the budget estimate and $1,241,000 over the amount allowed by the House; and will support a total of 4,084 permanent positions.

This appropriation provides for the various statistical programs of the Bureau of the Census, which cover economic, demographic, and social statistics areas and are used for decisionmaking by governments, private organizations, and individuals. The amount recommended in the bill will fund the current program level adjusted for certain mandatory cost increases which include annualization of pay increases granted in 1978, within grade step increases, increased travel costs, and increased utility and other service charges. The Committee has approved the following requested program increases; 14 positions and $549,000 to implement a monthly survey of inventories, sales and related information for large complex companies on the retail, wholesale, and manufacturing sectors to improve inventory valuation; 24 positions and $878,000 for development of the Survey of Income and Program Participation; and $125,000 to reimburse the Internal Revenue Service for the continued collection of wage data in order to avoid duplicate requests for data on small firms. The Committee was assured that this data is furnished in aggregate form and that no data regarding individual firms will be released by the Census Bureau.

SMALL COMMUNITY DATA

While the Committee recognizes the noble and necessary efforts of the Bureau to protect the privacy of individual respondents, the Committee is also concerned with the difficulties confronting small communities which are, in practice, denied access to Census data because is rendered incomplete or inaccurate by these very efforts. Therefore, the Committee directs the Bureau to develop a study proposal which will analyze the special problems encountered by small and rural

communities in their enumeration in and utilization of census data. The Committee expects that the Bureau will keep it informed of the progress of this effort. The areas to be addressed must include alternative aggregations of data, sample size selections, data presentation format, and the development of mechanisms to better distribute census data to insure its availability to local, rural, and small community planners. This proposal shall be completed promptly and implemented in the 1980 decennial census.

PERIODIC CENSUSES AND PROGRAMS

1978 appropriations to date	[1] $78,000,000
1979 Budget estimate	237,355,000
House allowance	175,000,000
Committee recommendation	199,200,000

[1] Excludes pending supplemental appropriation estimates of $5,680,000.

The Committee recommends an appropriation of $199,200,000, an increase of $121,200,000 over the 1978 appropriations to date. The amount recommended is $38,155,000 under the budget estimate and $24,200,000 over the amount allowed by the House; and will support a total of 571 permanent positions.

The amount recommended includes increases provided under the House allowance for tabulation and analysis of data collected for the 1977 economic censuses, review and evaluation of data and printing of preliminary reports in connection with the 1978 census of agriculture, continued preparation for the 1980 decennial census, initial planning for the mid-decade census, purchase of capital equipment, and increased administrative support. In addition the Committee has restored the $24,200,000 not allowed by the House and budgeted for the final preparatory work for the 1980 Decennial Census.

The Committee has inserted an amendment to clarify that the proviso in the bill regarding piece rate payments is restricted to enumerators working on the 1980 Decennial Census.

VOTING RIGHTS SURVEYS

The Committee has not approved the funds requested for carrying out registration and voting surveys related to the November 1978 general elections. The Voting Rights Act of 1965, as amended by Public Law 94–73 provides for biennial surveys of registration and voting in every State or political subdivision which falls within the provisions of the Act and in those jurisdictions designated by the U.S. Civil Rights Commission. The data to be provided are a count of citizens of voting age by race or color, and language minorities specified in the act, and a determination of the extent to which such persons are registered to vote and have voted in elections surveyed. The purpose of compiling such information is to assist the Department of Justice in identifying those jurisdictions with voting problems and to provide the Congress with data to measure the impact of the act.

The Bureau of the Census surveyed the 1976 elections at a cost of $4,000,000. This survey was submitted to the Congress long after the elections were held, and according to Census Bureau officials was unsatisfactory because of insufficient leadtime and differing interpreta-

tions of the law. The current cost estimate for the much larger survey proposed for the 1978 elections is $44,000,000 of which $7,000,000 was appropriated in the 1978 Supplemental Appropriations Act.

On February 6, 1978, the General Accounting Office issued a report at the request of the House Judiciary Committee on the enforcement of the Voting Rights Act's special and minority language provisions by the Department of Justice. GAO stated in the report that Department of Justice officials said that the survey statistics will only provide indications of voting problems and that Justice litigative staff would have to investigate alleged voting improprieties for actual verification. GAO also stated that while the surveys will provide Congress with some impact data, the estimated $44,000,000 that a useful survey would cost may be too expensive in light of the Department of Justice's ability to use its results for litigation. GAO concluded that the Congress should reassess the adequacy and need for the survey in light of its limited usefulness and substantial costs. The Committee hopes that the elimination of the funds for conducting the surveys will prompt such a reassessment. If after reviewing the program, the Congress decides that the surveys are necessary, the Committee would be willing to consider a funding request.

Economic and Statistical Analysis

SALARIES AND EXPENSES

1978 appropriations to date	[1] $13,475,000
1979 budget estimate	16,875,000
House allowance	16,080,000
Committee recommendation	16,875,000

[1] Excludes pending supplemental appropriation estimates of $804,000.

The Committee recommends an appropriation of $16,875,000, an increase of $3,400,000 over the 1978 appropriations to date. The amount recommended is the same as the budget estimate and $795,000 over the amount allowed by the House; and will support a total of 527 permanent positions.

This appropriation provides for the various statistical activities of the Bureau of Economic Analysis, the Office of Federal Statistical Policy and Standards, the Office of Industrial Economics and the Office of Economic Affairs. The Office of Federal Statistical Policy and Standards was transferred to the Department of Commerce under Reorganization Plan No. 1 of 1977. The latter two offices are included within this appropriation as the result of an internal reorganization within the Department in fiscal year 1978.

The amount recommended will provide for mandatory cost increases including annualization of pay increases granted in fiscal year 1978, within grade step increases, printing and reproduction and other service charges.

The increase over the amount allowed by the House covers a project to develop measures of national defense purchases in constant dollars. Departmental witnesses testified that this project was already underway in fiscal year 1978 and was financed on a reimbursable basis by the Department of Defense. The Committee believes it would be better financial policy to have this project directly funded.

The Committee has also allowed the additional 10 positions and $350,000 requested for the Office of Federal Statistical Policy and Standards. It has come to the Committee's attention that when this office was transferred from the Office of Management and Budget to the Department under Reorganization Plan No. 1 of 1977, certain positions and resources were retained by OMB. This is a high-handed procedure on the part of the OMB and the Committee does not believe that the Department should absorb the difference.

Economic Development Administration

ECONOMIC DEVELOPMENT ASSISTANCE PROGRAMS

1978 appropriations to date	[1] $382,500,000
1979 budget estimate	627,425,000
House allowance	484,325,000
Committee recommendation	697,775,000

[1] Excludes pending supplemental appropriation estimates of $117,000,000.

The Committee recommends an appropriation of $697,775,000, an increase of $315,275,000 over the 1978 appropriations to date. The amount recommended is $70,350,000 over the budget estimate and $213,450,000 over the amount allowed by the House.

This new budget authority provides for economic development assistance as authorized by titles I, II, III, IV, and IX of the Public Works and Economic Development Act of 1965, as amended, and title II of the Trade Act of 1974. In addition, the bill provides that unobligated balances approximating $4,600,000 from the account, "Financial and Technical Assistance" be merged with this appropriation. That program was authorized by the Trade Expansion Act of 1962 to provide direct loans and technical assistance to businesses injured or threatened by increased imports. This program has now been replaced by a more liberalized program authorized by the Trade Act of 1974. Therefore, the balance of $4,600,000 remaining from the previous program is not being used and the Committee recommends that it be applied to the fiscal year 1979 program for trade adjustment assistance to firms, authorized by title II of the Trade Act of 1974.

The amount recommended will provide for substantial increases in virtually all of the traditional EDA program areas: public works, business development, planning, technical assistance, research, economic adjustment assistance to communities, and program evaluations.

The total increase of $213,450,000 over the House allowance includes $152,000,000 to fund the full amount authorized for the title II business loans and guarantees program. The Committee believes that the full utilization of this authority is a necessary interim measure pending the authorization of the National Development Bank.

The increase over the House amount also restores the $58,000,000 of title II and IV loans and guarantees that the House bill finances from receipts of the economic development revolving fund. The Committee directs that no further use be made of the unobligated balance of the revolving fund until a reprograming request, such as the one recently submitted and approved for loan guarantees to steel firms, is submitted and approved by the Committee.

The title IX request is reduced by $80,550,000, the amount by which the request exceeds the amount now authorized.

The Committee has taken action to assure that sufficient funds are available to assure that title I activities in rural areas continue at the 1978 level.

The Committee is pleased with the imaginative and innovative approach that EDA has shown in meeting the long-term recovery needs caused by the severe weather disasters that struck many areas of the nation during the winter of 1978. Instead of relying on title VIII, which authorizes economic recovery assistance for disaster areas but requires a long, formal planning process, EDA has moved ahead by assisting eligible areas under the more flexible authorization provided by title IX. The Committee strongly endorses this effort and urges that EDA continue and strengthen this program in fiscal year 1979.

The Committee has also allocated a total of $3,000,000 for the High Plains project. This amount, to be derived from the allocation for title IX, will complete the full authorization for the project, for which $3,000,000 was appropriated for fiscal year 1978.

The Committee is informed that phase I of the city dock project at Unalaska is nearing completion and that if phase II of that project is commenced during the 1979 fiscal year additional costs which would result from terminating phase I and starting phase II at a subsequent construction year could be avoided.

Unalaska is over 700 air-miles from Alaska's major city of Anchorage, resulting in high transportation costs for moving construction equipment and materials to the area. Therefore, the Committee believes that the Economic Development Administration should give priority to funding a $3 million grant for phase II of the project in order that the Unalaska dock may serve vessels in excess of 400 feet, and may support the necessary heavy-duty crane.

The following table summarizes the Committee's recommendation:

[In thousands of dollars]

Title and program	Request	House	Committee
Title I—Grants for public works and development facilities	$186,500	$186,500	$196,000
Title II—Loans and guarantees	48,000		200,000
Public works loans	(2,500)		(2,500)
Business loans and guarantees	(45,500)		(197,500)
Economic development revolving fund		(58,000)	
Title III—Planning, technical assistance, research and information	77,675	79,675	83,175
Planning	(34,495)	(36,495)	(39,995)
Technical assistance	(15,180)	(15,180)	(15,180)
Economic research	(5,500)	(5,500)	(5,500)
Program evaluation	(2,500)	(2,500)	(2,500)
Grants to States	(20,000)	(20,000)	(20,000)
Title IV—District programs and Indians	40,000	30,000	40,000
10-percent bonus grants	(30,000)	(30,000)	(30,000)
Business development in centers	(10,000)		(10,000)
Title IX—Special economic adjustment assistance	180,550	98,050	88,500
Total Public Works and Economic Development Act program	532,725	394,225	607,675
Trade Act of 1974	94,700	90,100	90,100
Business development	(75,300	(70,700)	(70,700
Technical assistance	(19,400)	(19,400)	(19,400)
Total economic development assistance programs	627,425	484,325	697,775

REDEVELOPMENT AREA LOAN PROGRAM

The Committee believes that there is an ever increasing need in this country for the formation of partnerships between the private sector and local governments to build, strengthen and stabilize through economic development activities the economies of local communities. The Economic Development Administration's section 204 redevelopment area loan program provides an avenue and the economic tools needed to help build this relationship. However, as the law is presently written the program is inoperable.

The Committee urges the Committee on the Environment and Public Works to take the necessary steps to make section 204 a viable program by changing it from a Federal loan program to a Federal grant program. The Committee in addition requests the Committee on the Environment and Public Works to act as expeditiously as possible so that this program may be utilized in fiscal year 1979. The Committee will give serious consideration to providing full appropriations for the section 204 program when the Economic Development Administration's fiscal year 1978 supplemental request comes before the Committee.

Pending the recommended legislative changes, the Committee strongly recommends that EDA retain the spirit of the section 204 regulations under title IX, including the 50–50 funding allocation division between qualified political jurisdictions with populations above and below 100,000. The Committee also expects that at least an additional $15 million will be made available for this program under title IX in the EDA fiscal year 1979 budget allocation in order to maintain the current program level.

ECONOMIC DEVELOPMENT DISTRICTS

Within the total amount provided in the bill, the Committee has allocated a total of $19,330,000 for the economic development district program. The additional $5,500,000 allocated to this program is to be used to fund the 103 designated and authorized but unfunded districts. The total amount available for the districts also includes sufficient funds to provide a 10 percent cost of living increase to existing districts funded prior to 1979, but the Committee does not expect EDA to automatically award the additional funds to districts not meeting normal performance measures.

PARTICIPATION OF ELECTED OFFICIALS IN PLANNING DISTRICTS

While recommending sufficient funds for all 103 eligible districts, the Committee is concerned that some 42 of these additional districts would not be able to participate in the economic development district program because their existing multipurpose regional agency is composed mainly of elected officials from general purpose local governments within those areas. These are the regional agencies that Congress and federal agencies have designated for other programs, such as A–95, HUD "701", LEAA, EPA 208, and MPA's for transportation.

These agencies are ineligible due to the current EDA regulations which have interpreted the requirements of participation of business, low income and minority interests in formulating economic development plans to be solely through representation of those interests on the governing bodies of these regional agencies. The Committee understands the vital need for these interests to participate and be adequately reflected in economic development planning. However, EDA's current policy appears too narrow and needs expansion to provide other approaches for involvement of these groups in the planning process without restricting the participation of governing bodies on existing regional agencies. These governing bodies are established pursuant to State law and interlocal agreement which provide for percentage participation of elected officials, so that it is impossible to meet the current EDA requirement.

The Committee expects the EDA to promptly modify the existing regulations to make eligible these types of regional agencies for participation in the program.

UNIVERSITY CENTERS

It has come to the attention of the Committee that the Economic Development Administration has recently adopted a policy to withdraw funding from several established ongoing university centers in order to start up new centers to serve additional areas. The proposed reduction in funds does not appear to be based on the lack of performance by the centers nor a lack of the agency's support for a university center program. In fact, in answer to questions from the Subcommittee, EDA responded that "the older centers were probably the most effective centers in operation." In view of this, the Committee concurs with the House that funding should be continued for existing centers.

Furthermore, the Committee believes that the funding of the ongoing centers should be maintained at their current levels.

LOCAL PUBLIC WORKS PROGRAM

1978 appropriations to date	(1)
1979 budget estimate	$10,607,000
House allowance	
Committee recommendation	10,600,000

[1] Excludes pending supplemental appropriation estimates of $3,788,000.

The Committee recommends an appropriation of $10,600,000, an increase of $10,600,000 over the 1978 appropriations to date. The amount recommended is $7,000 under the budget estimate and $10,600,000 over the amount allowed by the House; and will support a total of 170 permanent positions.

This appropriation provides for the continued monitoring and evaluation of the local public works program. A total of $25,000,000 was made available in fiscal year 1977 for administering the local public works program. This amount together with the recently approved supplemental of $3,788,000 for 1978 is expected to fund the administrative costs of this $6,000,000,000 program through fiscal year 1979.

Since this appropriation is not yet authorized, language has been inserted in the bill making the appropriation subject to authorization.

ADMINISTRATION OF ECONOMIC DEVELOPMENT ASSISTANCE PROGRAMS

1978 appropriations to date	[1] $26,825,000
1979 budget estimate	28,827,000
House allowance	28,690,000
Committee recommendation	29,950,000

[1] Excludes pending supplemental appropriation estimates of $1,670,000.

The Committee recommends an appropriation of $29,950,000, an increase of $3,125,0000 over the 1978 appropriations to date. The amount recommended is $1,123,000 over the budget estimate and $1,260,000 over the amount allowed by the House; and will support a total of 924 permanent positions.

This appropriation covers the salaries and expenses of EDA personnel, the cost of services provided to EDA by other Federal and non-Federal sources, and other costs incurred in administering the economic development assistance programs. The reductions are due to the transfers to the general administration appropriation for the Secretary's special initiatives fund and the centralization of the congressional relations activities.

The Committee recommendation includes the 25 additional positions requested for administering the various program increases contained in the appropriation entitled, "Economic Development Assistance Programs." In addition, the Committee has added $1,300,000 to the budget in order to reduce the lapse rate on the 924 permanent positions now authorized. Over the years the permanent positions compensation base has been allowed to erode to the point where less than 90 percent of the authorized positions could be on-board at any one time. This adjustment will add 52 staff years and is consistent with the increases recommended in the EDA program, the growing monitoring workload, and the plan to expand from 6 to 10 regional offices.

The Committee strongly recommends that the Economic Development Administration refrain from carrying out any reorganization that would result in the relocation of EDA economic development representatives from one state to another, or that would result in abolishing the existing system of state-based economic development representatives without prior consultation and approval by the appropriate committees of the Congress.

Regional Action Planning Commissions

REGIONAL DEVELOPMENT PROGRAMS

1978 appropriations to date	[1] $64,600,000
1979 budget estimate	63,876,000
House allowance	62,800,000
Committee recommendation	62,800,000

[1] Excludes pending supplemental appropriation estimates of $209,000.

The Committee recommends an appropriation of $62,800,000, a decrease of $1,800,000 over the 1978 appropriations to date. The amount recommended is $1,076,000 under the budget estimate and the same as the amount allowed by the House; and will support a total of 87 permanent positions.

The amount recommended provides for regional development programs and the administrative expenses of the eight regional commissions currently in existence, as authorized by title V of the Public Works and Economic Development Act of 1965, as amended.

The eight Regional Commissions cover all or portions of 34 States and serve the Atlantic Coastal Plains of the Southeast, the Four Corners of the Southwest, the New England area, the Upper Missouri River Region (Old West), the Ozarks, the Pacific Northwest region, the Upper Great Lakes region and the Southwest Border region. The Commissions provide technical and planning assistance, demonstration projects and supplemental grants for the economic development of these regions.

The Committee intends that $1,000,000 appropriated for 1978 for a new commission which is not currently planned to be established, be made available for the 1979 regional development program in addition to the amount provided in the accompanying bill. Thus the total available for the 1979 operations of the above 8 Commissions would be 63,800,000, which is essentially the full budget request.

LOCATION OF FIELD OFFICES

The Committee is concerned about the lack of clear policy regarding the location of the Commission's offices, particularly the field offices of the Federal cochairmen. The information at the hearing was that some of the Commission divide their staffs between Washington and in the States while others are almost wholly in Washington. Since the commissions began operations there has been a significant transfer of Federal grant making to the 10 Federal regional centers and it would seem that most of the Commission's efforts would be directed to those offices. The Committee is also concerned about the movement of some of the Federal cochairmen's offices when there is a change in the incumbent. The rationale for these changes presented at the hearing was far from convincing and the Committee requests a comprehensive rationale for the location of these offices be furnished by December 31, 1978.

The Committee has reduced the number of permanent positions authorized for the Federal cochairman to a maximum of 9 each, to reflect the actual operating level.

INDUSTRY AND TRADE ADMINISTRATION

OPERATIONS AND ADMINISTRATION

1978 appropriations to date	[1] $65,947,000
1979 budget estimate	69,733,000
House allowance	68,175,000
Committee recommendation	72,500,000

[1] Excludes pending supplemental appropriation estimates of $6,635,000.

The Committee recommends an appropriation of $72,500,000, an increase of $6,553,000 over the 1978 appropriations to date. The amount recommended is $2,767,000 over the budget estimate and $4,325,000 over the amount allowed by the House; and will support a total of 1774 permanent positions.

In view of the record setting trade deficits reported for each month of 1978, the Committee is compelled to recommend the full budget request for the programs of business assistance and trade development of the Industry and Trade Administration which was formerly the Domestic and International Business Administration.

Within the amount recommended, the Committee has approved the budget proposal to reduce the field operations by 15 positions and $425,000. The Committee has also approved the 87 positions and the appropriate funding to implement the 1977 amendments to the Export Administration Act. The amendments extended the authority of the Export Administration Act of 1969 and made numerous changes in the law, including provisions aimed at improving the export licensing process and at strengthening U.S. policy against compliance with foreign boycotts. With regard to the antiboycott provision, ITA will review and tabulate boycott reports and conduct a compliance and enforcement program, which will include investigation, prosecution, and public education, to deter and punish violations.

The Committee also recommends the addition of $3,025,000 to the amount requested in order to develop a fully computerized data system for matching textile imports against existing quotas and consultation levels. When operational, this system will make this vital data available within 20 days of the end of each month, instead of the 3 or 4 month lag now experienced under the present manual system; and enable a quick response to excessive textile imports.

The following table summarizes the amounts allowed by the House and the Committee's recommendation:

	House allowance		Committee recommendation	
	Permanent positions	Amount	Permanent positions	Amount
Export development:				
International marketing	295	$14,583	324	$15,200
Export stimulation	132	4,127	132	4,127
Subtotal	427	18,710	456	19,327
East-West trade	89	4,119	95	4,247
Domestic business development	231	8,948	253	12,441
International economic policy and research	208	7,412	212	7,487
Trade regulation	280	9,211	297	9,334
Field operations	328	10,075	313	9,650
Administration	140	9,700	148	10,004
Total requirements	1,703	68,175	1,774	72,500

Minority Business Enterprise

Minority Business Development

1978 appropriations to date	[1] $50,300,000
1979 budget estimate	60,559,000
House allowance	58,000,000
Committee recommendation	57,965,000

[1] Excludes pending supplemental appropriation estimates of $425,000.

The Committee recommends an appropriation of $57,965,000, an increase of $7,665,000 over the 1978 appropriations to date. The amount recommended is $2,594,000 under the budget estimate and $35,000 under the amount allowed by the House; and will support a total of 323 permanent positions. The reduction from the House amount relates solely to the consolidation of the congressional liaison activities discussed earlier under General Administration.

The mission of the Office of Minority Business Enterprise is to promote and assist the expansion of minority business enterprise in the United States by coordinating and encouraging action by Federal, State and local government agencies to assist minority business; by promoting action by the private sector; by providing financial assistance to public and private organizations which furnish management and technical assistance to minority business; by providing financial assistance for pilot or demonstration projects; and by disseminating information. The amount included in the accompanying bill will help OMBE fulfill this mission by providing for mandatory cost increases, primarily for pay and related benefits, and for significant program increases which include expanded client services and business development programs, demonstration projects aimed at developing alternative programs, and an improved program development and management capacity.

The Committee strongly supports assistance to minority business as witnessed by our recommendations for the Small Business Administration. However, OMBE has never had legislative authority and the testimony at the hearing was weak and by no means persuasive of the role of this organization. The Committee urges the Office of Management and Budget to consider the merger of OMBE into SBA's programs of assistance to minority businesses so that a unified program will be available for consideration in the 1980 budget review.

United States Travel Service

SALARIES AND EXPENSES

1978 appropriations to date	[1] $14,190,000
1979 budget estimate	14,543,000
House allowance	13,500,000
Committee recommendation	13,800,000

[1] Excludes pending supplemental appropriation estimates of $224,000.

The Committee recommends an appropriation of $13,800,000, a decrease of $390,000 under the 1978 appropriations to date. The amount recommended is $743,000 under the budget estimate and $300,000 over the amount allowed by the House; and will support a total of 130 permanent positions.

The U.S. Travel Service was established in 1961 to strengthen domestic and foreign commerce by marketing the United States as a travel destination, to prepare Americans for the reception and accommodation of foreign visitors, and to build friendly understanding and appreciation of the United States.

The amount recommended provides for the travel and tourism promotion programs of the U.S. Travel Service, and includes a total of

$950,000 for the matching grants and funds for nondiscretionary costs, primarily annualization of pay increases granted in 1978, within grade step increases, postage and printing. The recommendation does not include any funds for the domestic tourism promotion program.

National Oceanic and Atmospheric Administration

operations, research, and facilities

1978 appropriations to date	[1] 607,506,000
1979 budet estimate	661,167,000
House allowance	651,770,000
Committee recommendation	675,800,000

[1] Excludes pending supplemental appropriation estimates of $19,740,000.

The Committee recommends an appropriation of $675,800,000, an increase of $68,294,000 over the 1978 appropriations to date. The amount recommended is $14,633,000 over the budget estimate and $24,030,000 over the amount allowed by the House; and will support a total of 12,420 permanent positions.

The recommended amount includes increases for nautical charts, operation of a new fishery research vessel, pollution abatement equipment for NOAA vessels, marine resources assessments, fisheries habitat protection, marine mammals and endangered species programs, and pollution abatement facilities at seven Columbia River fish hatcheries. The recommendation also provides for Regional Fishery Management Council support, fisheries data and enforcement programs, and additional marine ecosystems investigations including ocean dumpsite evaluations and dumping research, Gulf of Mexico environmental studies, expansion of the DOMES II and Puget Sound projects, long-term effects studies, and a hazardous materials response program. Also provided are funds to expand ocean engineering programs to include water quality measurements for long term monitoring of the general health of the continental shelf and its waters, procure shipboard environmental data acquisition systems, equip weather radars with radar data processors, purchase the existing computer now leased at the Geophysical Fluid Dynamics Laboratory, automate the National Weather Service's upper air tracking system, continue procurement for the TIROS N and GOES satellite programs, SEASAT A research, operate NOAA weather radio stations, procure equipment for Great Lakes weather observations, conduct the Equatorial Pacific Ocean Climate Studies, complete the community preparedness program, establish a new River Forecast Center at Minneapolis, Minn., expand operations of the Center for Climatic and Environmental Assessment, modernize data management equipment and provide maintenance and calibration for NOAA aircraft.

The total amount recommended for this appropriation includes an additional $350,000 for recreational fisheries surveys to bring the 1979 increase to $600,000. The Committee has provided $1,200,000 for the NMFS microconstituent program at the Southeast Utilization Research Center. Also included is $400,000 for a cooperative program with South Carolina to improve geodetic network controls. The base reduction of $43,000 for menhaden utilization research in South Carolina has been restored in the Committee allowance.

An additional $3,500,000 is provided for the Sea Grant program above the $1,800,000 added by the House. Also included is $1,500,000 to expand support for tuna fishing development programs in the Pacific through the Pacific Tuna Development Foundation. The Committee is particularly impressed with PTDF's programs of "Tuna Purse Seining in the Western Pacific" and "Fisheries Development Plans" and expects the information collected to be shared with the member nations of the South Pacific Forum. By recommending an appropriation for PTDF's on-going activities the Committee does not intend that the Foundation will be precluded from further Saltonstall-Kennedy funding.

The Committee has included $300,000 to conduct architectual and engineering design studies in 1979 leading to the construction and operation of a new facility at the Manchester Fisheries Laboratory. The total project cost is estimated at $10,279,000 through 1982.

The Committee further recommends $500,000 for the NMFS Ocean Pulse project to provide marine monitoring from Cape Hatteras to the Gulf of Maine. The $65,000 proposed for deletion from the budget is restored for the Northeast sea herring study. An amount of $300,000 above the budget request is included for aquaculture programs. The Committee also has included $2,500,000 to increase the total available for Regional Fishery Management Council support to $8,500,000 in 1979.

Due to the lack of persuasive information the Committee has concurred with the House that the 19 Weather Service Offices, proposed for closing in the 1979 budget, should remain open with no reduction in the quality of service. The allowance includes 58 positions and $1,713,000 to maintain operations at these stations. It would appear that some of these offices are marginal operations and the Committee will be open to a comprehensive review next year that includes comparative staffing and performance data, and special operating requirements for all the Weather Service Offices.

The Committee has not concurred with the House in the transfer of $5,000,000 from the fund entitled "Promote and develop fishery products and research pertaining to American fisheries" to this account. The $5,000,000 is restored in the allowance in order that projects proposed for support under this Fund may be completed as planned. The Committee understands that carryover balances originally projected in the budget for the Fund can be effectively utilized in 1978 and 1979, and, therefore, the $5,000,000 is not available for transfer to this appropriation.

Funding was not requested to continue the Ocean-Lab project in 1979. The Committee understands that new funding was not requested because of the need to complete additional studies leading to selection of the most cost-effective system. The Committee expects that a fiscal year 1979 supplemental request for the continuation of the Ocean-Lab program including construction will be submitted. The Committee further understands that a total of $1,433,000 of 1978 funding available for the Ocean-Lab project will be carried over into 1979 to support continued Ocean-Lab studies and regional underwater programs.

The Committee notes that the Hawaii Department of Planning and Economic Development has proposed the development of a pilot flash freezing and fish holding facility, to be constructed out of Saltonstall-

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Kennedy funds. Believing that such a facility would greatly enhance state efforts to develop acquaculture and the underutilized fisheries industry, the Committee urges that this request will be given favorable consideration.

Although the Committee has not allowed the specific NOAA request for $200,000 to plan the development of an ocean climate monitoring system, it is not adverse to NOAA taking the first steps towards planning such a system, but requires that funds for such an activity be found among moneys appropriated for other aspects of the climate program.

Included within the total amount allowed by the Committee is $100,000 to provide a Shark Research and Advisory Center at the Mote Marine Laboratory at Sarasota, Florida. The Committee understands this program would be funded through the Sea Grant program.

Also included within the allowance is $27,000 for planning and design of a desalinization plant on St. Georges Island in the Pribilofs. A total of $271,000 will be required for construction of the plant in 1980. Construction of the plant will improve the capital facilities in Pribilof Islands and assist the native population in becoming self-sufficient.

CONSTRUCTION

1978 appropriations to date	$15,500,000
1979 budget estimate	44,000,000
House allowance	----------
Committee recommendation	----------

The Committee has not approved the budget estimate of $44,000,000 for construction of NOAA facilities at Sand Point, Seattle, Wash. The Department testified that the U.S. district court will receive the draft supplemental environmental impact statement on June 30, with public hearings and comment to be concluded by September 15. The publication of the final supplemental environmental impact statement is scheduled for October 7, with resubmission to the U.S. district court scheduled for November 7.

The Committee remains strongly committed to the concept of a western regional headquarters facility. Consistent with the environmental assessment process under the National Environmental Protection Act as required by the U.S. district court, the Committee expects a supplemental budget request in fiscal year 1979 for completion of the facility as originally envisioned.

Departmental testimony revealed that the $44,000,000 budget estimate does not fund the full project as outlined last year. This estimate excludes funds for the education center, reception center, indoor workshop, covered storage and unheated warehouse, plus road work, utilities, et cetera, related to these structures. It is the Committee's understanding that the supplemental budget request will include funding for these facilities.

COASTAL ZONE MANAGEMENT

1978 appropriations to date	[1] $50,822,000
1979 budget estimate	57,279,000
House allowance	57,200,000
Committee recommendation	57,600,000

[1] Excludes pending supplemental appropriation estimates of $144,000.

The Committee recommends an appropriation of $57,600,000, an increase of $6,778,000 over the 1978 appropriations to date. The amount recommended is $321,000 over the budget estimate and $400,000 over the amount allowed by the House; and will support a total of 95 permanent positions.

The coastal zone management program provides assistance to the States in the exercise of their responsibilities in the coastal zone through the development and implemenation of management programs, establishing and maintaining marine and estuarine sanctuaries, and planning for the impact of energy resources development.

The funds provided include an increase of $10,060,000 for energy impact formula grants for a total of $27,750,000, an increase of $2,700,000 for estuarine sanctuaries to acquire three sites and operate and maintain five previously established sanctuaries, and an increase of $500,000 for the preservation or restoration of designated marine sanctuaries. Funding for program administration grants remains at the 1978 level of $18,212,000 which should support the number of States presently anticipated to participate in the program. The Committee was assured that supplemental funding would be requested if this amount is not adequate to fund all States which have received program approval. The Committee has also provided $400,000 for the initiation of a program of interstate cooperation through 90 percent matching grants under Section 309 of the Coastal Zone Management Act, as amended.

Coastal Energy Impact Fund

1978 appropriations to date	$115,000,000
1979 budget estimate	4,036,000
House allowance	
Committee recommendation	4,000,000

The Committee recommends an appropriation of $4,000,000, a decrease of $111,000,000 under the 1978 appropriations to date. The amount recommended is $36,000 under the budget estimate and $4,000,000 over the amount allowed by the House; and will support a total of 13 permanent positions.

The coastal energy impact program was authorized by section 308 of the Coastal Zone Management Act Amendments of 1976, Public Law 94–370, to provide Federal financial assistance to coastal States and their local governments in planning and responding to the impact resulting from Outer Continental Shelf energy development activities. The program consists of planning and environmental grants, loans, guarantees, and repayment assistance to areas where energy-related facilities do not generate adequate tax revenues. A total of $230,000,000 was appropriated to the fund in fiscal years 1977 and 1978 of which $200,000,000 is expected to be carried over into 1979.

Numerous problems have delayed utilization of loans and loan guarantees from the fund. These include slippage in OCS leasing schedules, delays in implementing State programs in response to the Federal slippage in initiative, final approval of the program's regulations, and uncertainty regarding the impact of potential changes by the Congress of the authorization for section 308(b), energy impact

formula grants. As a result, the original program level projected fo loans and loan guarantees for 1978 of $143,000,000 is now estimate to be only $20,000,000.

A provision in the bill limits total obligations from the fund t $200,036,000 and intends that program management costs and plan ning grants be available from this amount at the levels proposed i the budget request.

The Committee has restored the $4,000,000 requested for the plan ning grants and program management that the House bill would fund from the carry over balances because this anticipated carry over of $200,000,000 is not available for reassignment to planning grants and program management. CEIF funds are allotted by State when appropriated for a period of three years. Since 1977 was the first year of the program, no funds will be available for reallotment until 1980. To reallot these funds in 1979 would be a violation of NOAA's regula tions and would alter the distribution of funding by state. Failure to maintain planning grants at the fiscal year 1978 level ($3,500,000) will not allow those eligible coastal States to plan for adverse impacts arising from coastal energy activities. These activities include locating electric powerplants, Outer Continental Shelf onshore support facili ties, oil, and gas facilities, pipelines, terminals, and refineries. The inability to provide funds for program management will not permit NOAA to undertake the environmental engineering, economic, and financial review of proposed coastal energy impact program funded projects.

National Fire Prevention and Control Administration

operations, research, and administration

1978 appropriations to date	[1] $13, 850, 000
1979 budget estimate	17, 826, 000
House allowance	
Committee recommendation	18, 300, 000

[1] Excludes pending supplemental appropriation estimates of $349,000.

The Committee recommends an appropriation of $18,300,000, an increase of $4,450,000 over the 1978 appropriations to date. The amount recommended is $474,000 over the budget estimate and $18,- 300,000 over the amount allowed by the House; and will support a total of 125 permanent positions.

The National Fire Prevention and Control Administration develops and delivers education and training programs through the National Academy for Fire Prevention and Control, develops programs to educate the public in fire safety and prevention, operates the National Fire Data Center, and conducts a research and development program and a fire technology and planning program. The increase provided by the Committee includes the funds requested to administer and coordi nate public education programs, conduct an urban fire loss program, maintain and disseminate data collected by the National Fire Incident Reporting System, improve fire loss estimates, develop a national fire policy, study delivery of fire services, review fire codes and standards, install a security system for programs conducted at the Fire Research

Center, NIKE site and increase administrative support. The Committee also recommends $500,000 to develop a new residential sprinkler standard.

The Committee has deferred, at this time, any action on additional funding to renovate the former Marjorie Webster Junior College property purchased in 1977 for the National Fire Academy. The Committee plans to recommend additional funding for the Academy in the fiscal year 1978 second supplemental appropriations bill.

Patent and Trademark Office

SALARIES AND EXPENSES

1978 appropriations to date	[1] $89, 500, 000
1979 budget estimate	94, 753, 000
House allowance	93, 600, 000
Committee recommendation	93, 600, 000

[1] Excludes pending supplemental appropriation estimates of $4,860,000.

The Committee recommends an appropriation of $93,600,000, an increase of $4,100,000 over the 1978 appropriations to date. The amount recommended is $1,153,000 under the budget estimate and the same as the amount allowed by the House; and will support a total of 2,984 permanent positions.

The basic functions of the Patent and Trademark Office are to examine patent applications and grant patents when applicants are entitled to them under the law; publish patent information record assignment of patents, maintain search files of United States and foreign patents and the Patent Search Center for public use; and sell copies of patents and official records to the public. Similar functions are performed relating to trademarks. The Committee recommendation includes some additional funds for projected increases in the cost of printing, increased space rental, and increased clerical support.

The Committee urges the Office to monitor the financing of its examination activity closely in fiscal year 1979. Substantial reprogrammings were made in 1978 and 1977 from savings in printing costs to finance examiner positions. The budget for 1979 projects an increase in such printing costs and shows a decrease in the financing of the examination function with no decrease in positions. The Committee urges the Department of Commerce and the Office to devote sufficient management attention to this problem in order to prevent any serious budgetary shortfall from developing.

Science and Technical Research

SCIENTIFIC AND TECHNICAL RESEARCH AND SERVICES

1978 appropriations to date	[1] $72, 416, 000
1979 budget estimate	95, 520, 000
House allowance	
Committee recommendation	88, 150, 000

[1] Excludes pending supplemental appropriation estimates of $5,252,000.

The Committee recommends an appropriation of $88,150,000, an increase of $15,734,000 over the 1978 appropriations to date. The

amount recommended is $7,370,000 under the budget estimate an $88,150,000 over the amount allowed by the House; and will suppo a total of 1,884 permanent positions.

This appropriation provides for the science, research and technolog programs and activities including the National Bureau of Standard and the National Technical Information Service. The Office of Tele communications, previously funded in this appropriation, became pa of the National Telecommunications and Information Administratio by Reorganization Plan No. 1 of 1977.

The increase recommended will provide for certain mandatory ex penses and for the following program improvements: rebuilding state of-the-art capabilities in various technical and research areas; expand ing nondestructive evaluation; increasing the power output of th NBS reactor; studying the need for a cooperative technology progra ($2,000,000); developing a central planning and evaluation capability upgrading laboratory equipment and depreciating new equipmen purchased in fiscal year 1978; evaluating Government patents for li censing; and improving the application of computer technology an mathematics.

The Committee has recommended an additional $6,962,000 and posi tions to begin full implementation of the Federal computer standard program. This amount, together with the $4,454,000 included for thi program in the base, will provide sufficient resources to develop a com prehensive, detailed plan for meaningful Federal computer standard development and permit the initial implementation of such a plan. The plan should include detailed objectives and goals for the developmen of standards, total estimated costs of the program, enforcement an compliance mechanisms, and the role of the various Federal agencie in the program. In addition, the plan should include a mechanism fo measuring the cost and benefits of individual standards and for making such information publicly available prior to implementing each stand ard. NBS should submit their management plan containing these ele ments to the Office of Management and Budget for review and ap proval. After such a plan has been approved, the Committee would be willing to consider requests for additional funding.

NATIONAL TECHNICAL INFORMATION SERVICE

The Committee is informed that the National Technical Information Service is encouraging contractors doing considerable work for the Government to apply for copyright for their reports and studies. NTIS is apparently doing all the paperwork and paying the copyright fees of the contractors agreeing to put their reports into NTIS.

The Committee feels that since the Congress did not choose to give NTIS copyright protection when they asked for it in 1976 that it is better for the public interest to follow the copyright law as stated in Public Law 94–553, section 105. Copyright protection under this title is not available for any work of the U.S. Government, but the U.S. Government is not precluded from receiving and holding copyrights transferred to it by assignment, bequest, or otherwise.

By keeping Government publications free of copyright, the right of the citizen is protected to freely copy what they have already paid

for through their taxes. This is especially important for small micro-publishers who wish to reproduce and sell certain subjects or other subsets of Government publications.

National Telecommunications and Information Administration

Salaries and Expenses

1978 appropriations to date	[1] $4,763,000
1979 budget estimate	11,981,000
House allowance	10,965,000
Committee recommendation	12,000,000

[1] Excludes pending supplemental appropriation estimates of $4,148,000.

The Committee recommends an appropriation of $12,000,000, an increase of $7,237,000 over the 1978 appropriations to date. The amount recommended is $19,000 over the budget estimate and $1,035,000 over the amount allowed by the House; and will support a total of 252 permanent positions.

This new organization was formed pursuant to Reorganization Plan No. 1 of 1977 and assumed the functions of the Office of Telecommunications Policy (OTP) in the Executive Office of the President and the Office of Telecommunications in the Department of Commerce. The functions of the new agency include the development of a national communications and information policy, allocation and management of the Federal use of radio frequency spectrum allocations, and research and analysis leading to efficient use of the radio spectrum and effective application of telecommunications technology.

The amount recommended will essentially provide the full amount requested and provide for the cost of studying issues related to common carrier regulation; expanding policy development programs to include broadcasting, cable, and other regulatory issues; and studying the aspects of radio spectrum scarcity.

The Committee is aware of increasing electromagnetic interference problems resulting from a combination of the rapid proliferation of sources of electromagnetic radiation—industrial, automotive, safety, medical, broadcasting, citizens band radio, governmental—and the marked expansion in application of new technological advances in electronics, such as semiconductor technology. However, as evidenced by recent Senate Commerce Committee hearings, there is a serious lack of readily available information defining the existing and anticipated electromagnetic field environment in the United States.

The National Bureau of Standards and the National Telecommunications and Information Administration within the Department of Commerce are presently engaged in studying the scope and magnitude of the EMI problem. The Committee believes that these two agencies should play a leading role in the Government; that they should accord a high priority to this serious EMI problem; and that they can profitably pool their efforts in developing common measurement methodology to be used by many Federal agencies and the private sector in dealing with the EMI problem. Mapping of the EMI environment would be another very useful undertaking. The Committee urges the Department to continue its EMI efforts and to give due consideration to expanding its activities in this area.

MARITIME ADMINISTRATION

SHIP CONSTRUCTION

1978 appropriations to date	$135,000,0
1979 budget estimate	157,000,0
House allowance	
Committee recommendation	157,000,0

The Committee recommends an appropriation of $157,000,000, a increase of $22,000,000 over the 1978 appropriations to date. Th amount recommended is the same as the budget estimate and $157 000,000 over the amount allowed by the House.

This appropriation provides for payment to U.S. shipyards of cor struction-differential subsidies. These subsidies enable the constructio or reconstruction of ships at prices comparable to those which woul be paid for equivalent ships constructed in foreign shipyards.

The 1979 proposed construction program includes two containe ships, two roll-on/roll-off ships and two liquefied natural (LNG) ca riers. The containerships and roll-on/roll-off ships represent replace ment obligations associated with operating-differential subsidy con tracts. The LNG carriers are for the El Paso II project.

OPERATING-DIFFERENTIAL SUBSIDIES

1978 appropriations to date	($352,000,000
1979 budget estimate	(262,800,000
House allowance	
Committee recommendation	(250,000,000

The Committee recommends the appropriation of $250,000,000 fo payment of obligations already incurred for operating-differential sub sidies of American ship operators. This amount is $102,000,000 less than the 1978 appropriation to date and is $12,800,000 less than the budget estimate and is $250,000,000 more than the amount allowed by the House.

American ship operators are apparently not making use of the sub sidy programs for carriage of grain to Russia because of the oppor tunity to carry more profitable oil cargoes. In addition, the budget forecasts further acceleration of payment rates for 1979 subsidies. This does not appear to be feasible. For these reasons the Committee has re duced the amount requested for this program. The Maritime Admin istration is to be commended on the progress already being made in reducing the time between subsidy accrual and payment.

RESEARCH AND DEVELOPMENT

1978 appropriations date	$18,325,000
1979 budget estimate	17,500,000
House allowance	
Committee recommendation	17,500,000

The Committee recommends an appropriation of $17,500,000, a de crease of $825,000 under the 1978 appropriations to date. The amount recommended is the same as the budget estimate and $17,500,000 over the amount allowed by the House.

Although the amount recommended reflects reductions in the ad vanced ship operations, maritime research and competitive shipbuild-

ing programs, it includes increases for the advanced ship machinery program, communications and navigation projects, and the advanced maritime technology program, which includes energy supply and conservation projects.

OPERATIONS AND TRAINING

1978 appropriations to date	[1] $54, 200, 000
1979 budget estimate	57, 328, 000
House allowance	
Committee recommendation	57, 150, 000

[1] Excludes pending supplemental appropriation estimates of $2,050,000.

The Committee recommends an appropriation of $57,150,000, an increase of $2,950,000 over the 1978 appropriations to date. The amount recommended is $178,000 under the budget estimate and $57,150,000 over the amount allowed by the House; and will support a total of 1,349 permanent positions.

This appropriation provides for the administrative expenses of the Maritime Administration, maintenance of the national defense reserve fleet, the cost of training at the U.S. Merchant Marine Academy, and Federal financial support to the State marine schools. This amount is $178,000 below the budget estimate, but is $2,950,000 above appropriations enacted to date for 1978 for this appropriation item. The reduction from the estimate is due solely to the transfer of funds to the General Administration appropriation for the Secretary's special initiatives fund and the enlargement of the congressional liaison function.

The amount provided will allow expansion of the shipboard firefighting training program and the collision avoidance radar training schools, improved activation capability of selected ships in the National Defense Reserve Fleet, expanded monitoring of the government shipping cargo preference program, certain administrative improvements, and financing of non-discretionary increases. In addition, the amount provided includes $150,000 for additional grants to the State marine schools above the budget request.

The Committee expects the Maritime Administration to study the matter of including additional students at the State marine schools in the student subsidy program and report to the Committee with a cost estimate on this subject as soon as possible.

TITLE IV—THE JUDICIARY

SUPREME COURT OF THE UNITED STATES

SALARIES AND EXPENSES

1978 appropriations to date	[1] $8,391,000
1979 budget estimate	[2] 9,430,000
House allowance	8,960,000
Committee recommendation	9,718,000

[1] Excludes pending supplemental appropriation estimates of $383,000.
[2] Includes budget amendment of $470,000 transmitted in Senate Document 95–106.

The Committee recommends an appropriation of $9,718,000 an increase of $1,327,000 over the 1978 appropriations to date. The amount recommended is $288,000 over the budget estimate and $758,000 over the amount allowed by the House; and will support a total of 325 permanent positions.

The amount recommended provides for all the increases requested including funds for an assistant for the Curatorial Office, an additional passenger motor vehicle for the motor pool and a word processing and printing system. The printing increase includes $470,000 requested in a budget amendment that was not considered by the House of Representatives. In addition, the Committee on its own initiative has added $288,000 to provide each Associate Justice with a leased motor vehicle ($28,000); and to provide each Justice with two additional stenographers in order to keep up with the heavy workload of the Court ($260,000).

CARE OF THE BUILDING AND GROUNDS

1978 appropriations to date	[1] $800,000
1979 budget estimate	[2] 1,450,000
House allowance	999,600
Committee recommendation	1,450,000

[1] Excludes pending supplemental appropriation estimates of $803,800.
[2] Includes budget amendment of $450,400 transmitted in Senate Document 95–331.

The Committee recommends an appropriation of $1,450,000, an increase of $650,000 over the 1978 appropriations to date. The amount recommended is the full amount of the budget estimate and $450,400 over the amount allowed by the House; and will support a total of 33 permanent positions.

The amount recommended by the Committee includes funds for routine maintenance as well as increases for replacement for sidewalks, an energy conservation program and landscaping. The additional $450,400 over the amount provided by the House is to pay for the steam and chilled water supplied by the Capitol Power Plant and is in accordance with the recommendations of the Legislative Branch Subcommittee that non-congressional users pay for these services.

Court of Customs and Patent Appeals

SALARIES AND EXPENSES

1978 appropriations to date	[1] $1,020,000
1979 budget estimate	1,099,000
House allowance	1,099,000
Committee recommendation	1,099,000

[1] Excludes pending supplemental appropriation estimates of $46,000.

The Committee recommends an appropriation of $1,099,000, an increase of $79,000 over the 1978 appropriations to date. The amount recommended is the same as the budget estimate and the same as the amount allowed by the House; and will support a total of 36 permanent positions.

The amount recommended includes funds for mandatory increases as well as funds for participation in a health unit, installation of a centrex telephone system, and rental of word processing equipment.

Customs Court

SALARIES AND EXPENSES

1978 appropriations to date	[1] $2,907,000
1979 budget estimate	3,055,000
House allowance	3,055,000
Committee recommendation	3,055,000

[1] Excludes pending supplemental appropriation estimates of $156,000.

The Committee recommends an appropriation of $3,055,000, an increase of $148,000 over the 1978 appropriations to date. The amount recommended is the same as the budget estimate and the same as the amount allowed by the House; and will support a total of 114 permanent positions.

The amount recommended provides for the salaries of the nine judges and supporting personnel of the U.S. Customs Court, and the necessary operating expenses of the Court including travel expenses, expressage, communication services, printing and binding, supplies, equipment, furniture, new books and regular continuations of reports, encyclopedias, digests, and pocket parts of various sets, and miscellaneous items of expense for the fiscal year 1979.

Court of Claims

SALARIES AND EXPENSES

1978 appropriations to date	[1] $3,000,000
1979 budget estimate	3,574,000
House allowance	3,520,000
Committee recommendation	3,520,000

[1] Excludes pending supplemental appropriation estimates of $101,000.

The Committee recommends an appropriation of $3,520,000, an increase of $520,000 over the 1978 appropriations to date. The amount

recommended is $54,000 under the budget estimate and the same as the amount allowed by the House; and will support a total of 111 permanent positions.

The increase over the current appropriation is to cover mandatory cost increases as well as funds for an additional trial commissioner, 11 additional law clerks, installation of a centrex telephone system and participation in a health unit. The additional positions are needed in order to deal with cases formerly handled by the Indian Claims Commission, which is scheduled to be terminated September 30, 1978.

Courts of Appeals, District Courts, and Other Judicial Services

SALARIES OF JUDGES

1978 appropriations to date	$39,700,000
1979 budget estimate	40,258,000
House allowance	40,258,000
Committee recommendation	40,258,000

The Committee recommends an appropriation of $40,258,000, an increase of $558,000 over the 1978 appropriations to date. The amount recommended is the same as the budget estimate and the same as the amount allowed by the House; and will support a total of 496 permanent positions.

The amount recommended includes payment of the salaries of circuit judges, district judges, justices and judges who have retired or resigned pursuant to law, and annuities to widows of Supreme Court Justices. The increase is to cover an anticipated increase in the number of senior judges, agency contributions for health benefits, and a newly authorized judgeship for the Northern Mariana Islands.

SALARIES OF SUPPORTING PERSONNEL

1978 appropriations to date	[1] $148,400,000
1979 budget estimate	[2] 167,077,000
House allowance	164,300,000
Committee recommendation	166,195,000

[1] Excludes pending supplemental appropriation estimates of $10,407,000.
[2] Includes budget amendment of $1,895,000 transmitted in House Document 95–331.

The Committee recommends an appropriation of $166,195,000, an increase of $17,795,000 over the 1978 appropriations to date. The amount recommended is $882,000 under the budget estimate and $1,895,000 over the amount allowed by the House; and will support a total of 8,318 permanent positions.

The amount recommended provides for salaries of administrative and legal personnel necessary to assist judges in the conduct of hearings, trials, and other judicial functions, and to staff component offices of the courts, including the Federal Probation Service. The increase will provide funds for nondiscretionary increases, such as annualization of additional positions authorized for fiscal year 1978, within grade salary increases, promotions for newly appointed probation officers, and agency contributions for health benefits.

The increase will also provide for program changes as follows: 8 positions for the Northern Mariana Islands District Court; 18 deputy

clerks for courts of appeals; 16 secretaries and law clerks for senior judges; 34 legal research specialists; reclassification of staff attorneys in courts of appeals; and longevity increases for court reporters.

In addition, funds are included for personnel necessary for supporting the temporary emergency court of appeals authorized by Public Law 94–210.

The budget request included funds for a public information center and an administrative support unit for the circuit executive of the second circuit. No funds have been recommended for this purpose. The Committee has reservations with respect to the circuit executive assuming responsibility for an information center to service the public, which traditionally has been the responsibility of the General Services Administration. The support services, for which funds were requested, would appear to be the responsibility of the clerk of the court.

The budget amendment of $1,895,000 provides for the reclassification of secretaries to judges whereby a secretary with 8 years of experience as a secretary to a Federal judge, seven years in grade (GS) 10, may be compensated at General Schedule grade (GS) 11. The amendment also allows, on a temporary indefinite basis, the employment of 52 staff law clerks and 37 court secretaries for the circuit courts of appeals.

DEFENDER SERVICES

1978 appropriations to date	[1] $24,000,000
1979 budget estimate	24,800,000
House allowance	24,800,000
Committee recommendation	24,800,000

[1] Excludes pending supplemental appropriation estimates of $445,000.

The Committee recommends an appropriation of $24,800,000, an increase of $800,000 over the 1978 appropriations to date. The amount recommended is the same as the budget estimate and the same as the amount allowed by the House; and will support a total of 266 permanent positions.

The amount recommended is $24,800,000, the full amount requested, and covers the operation of Federal public defender and community defender organizations and the compensation and reimbursement of expenses of attorneys appointed to represent persons under the Criminal Justice Act of 1964, as amended.

FEES OF JURORS AND COMMISSIONERS

1978 appropriations to date	$23,250,000
1979 budget estimate	23,250,000
House allowance	20,750,000
Committee recommendation	20,750,000

The Committee recommends an appropriation of $20,750,000, a decrease of $2,500,000 under the 1978 appropriations to date. The amount recommended is $2,500,000 under the budget estimate and the same as the amount allowed by the House.

The amount recommended provides for compensation of jury commissioners and for fees, expenses and costs of grand and petit jurors. This item also covers compensation of commissioners appointed in

land condemnation cases. The amount recommended plus an estimat carryover of $2,500,000 will permit a program level consistent wi that of the current fiscal year.

TRAVEL AND MISCELLANEOUS EXPENSES

1978 appropriations to date	[1] $27, 600, 0
1979 budget estimate	[2] 32, 274, 0
House allowance	31, 700, 0
Committee recommendation	31, 914, 0

[1] Excludes pending supplemental appropriation estimates of $110,000.
[2] Includes budget amendment of $214,000 transmitted in House Document 95–331.

The Committee recommends an appropriation of $31,914,000, a increase of $4,314,000 over the 1978 appropriations to date. Th amount recommended is $360,000 under the budget estimate and $214 000 over the amount allowed by the House.

The amount recommended provides for travel and miscellaneou expenses of judges and supporting personnel of the courts of appeal and the district courts. These funds are required for attending session of court or transacting other official business and for equipment, la books, supplies, and other expenses of operating the 11 courts of ap peals and 95 district courts of the United States. Also included ar funds for operation of the temporary emergency court of appeal authorized by Public Law 92–210.

The increase over the current appropriation will allow for the non discretionary increases reflected in the budget as well as the following program changes: District Court for the Northern Mariana Islands expenses related to new personnel funded under "Salaries of Support ing Personnel;" improvements and expansion of telecommunications systems; computer assisted legal research; micrographics equipment and mechanized filing equipment.

The increase over the House allowance relates solely to the budget amendment of $214,000 providing for the miscellaneous expenses of the additional law clerks and secretaries for the circuit courts of appeals included under the heading "Salaries of Supporting Personnel."

SALARIES AND EXPENSES OF MAGISTRATES

1978 appropriations to date	[1] $17, 500, 000
1979 budget estimate	[2] 19, 471, 000
House allowance	18, 400, 000
Committee recommendation	19, 441, 000

[1] Excludes pending supplemental appropriation estimates of $370,000.
[2] Includes budget amendment of $1,041,000 transmitted in House Document 95–331.

The Committee recommends an appropriation of $19,441,000, an increase of $1,941,000 over the 1978 appropriations to date. The amount recommended is $30,000 under the budget estimate and $1,041,000 over the amount allowed by the House; and will support a total of 533 permanent positions.

The amount recommended provides for mandatory increases and the following program changes: two full-time magistrates and four supporting personnel; discontinuance of one part-time combination position; and discontinuance of three part-time magistrates positions;

authorization of two full-time secretaries for two full-time bankruptcy judge-magistrates; court reporter services for magistrate proceedings; and rental of automatic typewriters.

The increase over the House allowance relates solely to the budget amendment of $1,041,000 providing all of the funds required for additional magistrates and other changes authorized by the Judicial Conference in March 1978.

SALARIES AND EXPENSES OF REFEREES

1987 appropriations to date	[1] $33,500,000
1979 budget estimate	35,315,000
House allowance	35,300,000
Committee recommendation	35,300,000

[1] Excludes pending supplemental appropriation estimates of $1,135,000.

The Committee recommends an appropriation of $35,300,000, an increase of $1,800,000 over the 1978 appropriations to date. The amount recommended is $15,000 under the budget estimate and the same as the amount allowed by the House; and will support a total of 1,540 permanent positions.

The amount recommended will provide for seven additional positions and for the procurement of mechanized filing equipment, as well as funds for nondiscretionary increases reflected in the budget.

SPACE AND FACILITIES

1978 appropriations to date	$89,700,000
1979 budget estimate	99,577,000
House allowance	99,400,000
Committee recommendation	99,400,000

The Committee recommends an appropriation of $99,400,000, an increase of $9,700,000 over the 1978 appropriations to date. The amount recommended is $177,000 under the budget estimate and the same as the amount allowed by the House.

The amount recommended provides for the rental of space, tenant alterations, and related services for the U.S. courts of appeals and district courts, the Court of Customs and Patent Appeals, the Customs Court, the Court of Claims, the Administrative Office of the U.S. Courts, and the Federal Judicial Center. This item includes $7,050,000 for reimbursable protective services and $2,150,000 for procurement and maintenance of security equipment.

The Committee reiterates the position expressed in last year's report concerning protective services and security equipment. The Committee recognizes that a task force consisting of representatives of the Department of Justice, the General Services Administration, and the Administrative Office of the U.S. Courts, is looking into this matter and urges that the task force complete its review in time for adjustments to be reflected in the 1980 budget.

FURNITURE AND FURNISHINGS

1978 appropriations to date	$7,500,000
1979 budget estimate	8,616,000
House allowance	8,500,000
Committee recommendation	8,500,000

The Committee recommends an appropriation of $8,500,000, an i
crease of $1,000,000 over the 1978 appropriations to date. The amou
recommended is $116,000 under the budget estimate and the same
the amount allowed by the House.

The amount recommended relates primarily to occupancy of ne
buildings and newly constructed or remodeled facilities.

Funds for furniture and furnishings for the Court of Customs a
Patent Appeals, the Customs Court, the Court of Claims, the Admi
istrative Office of the U.S. Courts, and the Federal Judicial Cente
previously carried in this item, are now reflected in the budgets
those respective items as they appear in the Federal Judicial budg

PRETRIAL SERVICES AGENCIES, THE JUDICIARY

1978 appropriations to date	
1979 budget estimate	[1] $5, 000, 0
House allowance	
Committee recommendation	5, 000, 0

[1] Includes budget amendment of $5,000,000 transmitted in Senate Document 95–113.

The Committee recommends an appropriation of $5,000,000, t
amount of the amended budget estimate which was not considered
the House.

Legislation (S. 2937) is pending to provide further authorizati
for appropriations for Pretrial Services Agencies originally autho
ized by title II of the Speedy Trial Act of 1974. The Director of t
Administrative Office of the U.S. courts has established 10 Pretri
Services Agencies in representative judicial districts on a 4-ye
demonstration basis. To date, the 10 demonstration agencies have inte
viewed more than 14,000 defendants, provided reports to judici
officers, supervised defendants committed to their supervision, a
established a monitoring and statistical reporting system to meet t
requirements of the statute for the submission to Congress of a co
prehensive report.

Additional funds are now required because of general pay increas
and other cost factors. The amount recommended will be sufficient
continue operation of the Agencies through the 4 years required f
demonstration purposes as well as allowing some additional time f
Congress to subsequently consider and evaluate the reports and t
recommendations.

Administrative Office of the United States Courts

SALARIES AND EXPENSES

1978 appropriations to date	[1] $10, 500, 0
1979 budget estimate	12, 562, 0
House allowance	12, 250, 0
Committee recommendation	12, 250, 0

[1] Excludes pending supplemental appropriation estimates of $575,000.

The Committee recommends an appropriation of $12,250,000,
increase of $1,750,000 over the 1978 appropriations to date. The amou
recommended is $312,000 under the budget estimate and the same

the amount allowed by the House; and will support a total of 465 permanent positions.

The amount recommended provides for nondiscretionary increases reflected in the budget as well as the following program increases; one additional position for the Office of the General Counsel; one additional position for the Magistrates Division; one additional position for the Statistical Analysis and Reports Division; four additional positions for the Financial Management Division; five additional positions for the Administrative Services Division; procurement and rental of office equipment; increase in computer storage capability; and contractual services.

Federal Judicial Center

SALARIES AND EXPENSES

1978 appropriations to date	[1] $6,550,000
1979 budget estimate	8,744,000
House allowance	8,025,000
Committee recommendation	8,025,000

[1] Excludes pending supplemental appropriation estimates of $199,000.

The Committee recommends an appropriation of $8,025,000, an increase of $1,475,000 over the 1978 appropriations to date. The amount recommended is $719,000 under the budget estimate and the same as the amount allowed by the House; and will support a total of 113 permanent positions.

The amount recommended covers nondiscretionary increases reflected in the budget, participation in a health unit, and funds requested for Courtran II to provide for 17 additional positions, equipment, rent and communications, and contract services.

The functions of the Federal Judicial Center as set forth in title 28 of the United States Code, are:

1. To conduct research and study of the operation of the courts of the United States, and to stimulate and coordinate such research and study on the part of other public and private persons and agencies.

2. To develop and present for consideration by the Judicial Conference of the United States recommendations for improvement of the administration and management of the courts of the United States.

3. To stimulate, create, develop and conduct programs of continuing education and training for personnel of the judicial branch of the Government, including, but not limited to, judges, referees, clerks of courts, probation officers, and U.S. commissioners (magistrates).

4. Insofar as may be consistent with the performance of the other functions set forth in this section, to provide staff, research, and planning assistance to the Judicial Conference of the United States and its committees.

The Committee supports the efforts of the Center, however, it is concerned about continued expansion. The Committee feels that the Center should remain the research and development arm of the judiciary and should serve to test innovative approaches to dealing with the workload and problems of the judiciary. However, the Center should not become an operational arm of the Courts. As Courtran II is more fully implemented and becomes operational, the Center should consider phasing out of that operation.

BICENTENNIAL EXPENSES, THE JUDICIARY

The Committee recommends language which would permit the us of funds previously appropriated for bicentennial activities for plan ning the observance of the Bicentennial of the Constitution of th United States. The sum of $2,000,000 was appropriated for bicenten nial activities in the Judiciary Appropriation Act, 1976. The Com mittee was informed during recent hearings that more than $1,000,00 of that amount remain unobligated. The approval of this languag would permit the use of that unobligated balance for preparing fo observance of the Bicentennial of the Constitution of the Unite States.

TITLE V—RELATED AGENCIES

Arms Control and Disarmament Agency

ARMS CONTROL AND DISARMAMENT ACTIVITIES

1978 appropriations to date	[1] $13,600,000
1979 budget estimate	16,395,000
House allowance	
Committee recommendation	16,395,000

[1] Excludes pending supplemental appropriation estimates of $2,920,000.

The Committee recommends an appropriation of $16,395,000, an increase of $2,295,000 over the 1978 appropriations to date. The amount recommended is the same as the budget estimate and $16,395,000 more than the amount allowed by the House; and will support a total of 12 permanent positions.

The increase over the current appropriation is primarily for costs associated with the strategic arms limitation talks (SALT II).

Board for International Broadcasting

GRANTS AND EXPENSES

1978 appropriations to date	[1] $65,900,000
1979 budget estimate	85,180,000
House allowance	
Committee recommendation	85,000,000

[1] Excludes pending supplemental appropriation estimates of $10,468,000.

The Committee recommends an appropriation of $85,000,000, an increase of $19,100,000 over the 1978 appropriations to date. The amount recommended is $180,000 under the budget estimate and $85,000,000 over the amount allowed by the House; and will support a total of 10 permanent positions.

Nearly half of the increase for fiscal year 1979 over the fiscal year 1978 appropriation level is directly attributable to the devaluation of the dollar against the West German mark from 2.44 marks to 2.1075 marks, a situation involving international monetary factors over which the Board has no control.

The funds provided by the Committee take into account the Board's technical modernization program for fiscal year 1979, which involves the acquisition, by purchase from U.S. manufacturers, and installation of seven new 250-kilowatt transmitters, as recommended in the President's report to the Congress of March 22, 1977 on international broadcast facilities. Increased funding will also provide for higher electric power needs and costs, more intensive program evaluation ac-

tivities, stronger management supervision over the various language services, and non-discretionary administrative costs and service charges resulting from inflation's impact on today's cost of living.

The Committee recommendation includes the designation of $2,000,000 to be available only in the event of adverse fluctuations in foreign currency exchange rates vis-a-vis the dollar to ensure the smooth functioning of the Radios, and $65,000 for official reception and representation expenses which in its discretion the Board may make available for its own use and for that of RFE/RL. It is the view of the Committee that such expenses are vital and legitimate tools of the trade to collect information and to conduct interviews, without which the Board is unable to carry out to the fullest extent its mission of seeing to it that the Radios are operating within the framework of broad U.S. foreign policy objectives.

The Committee commends the Committee on Foreign Relations for closing a loophole in the Board for International Broadcasting Act (Public Law 93–129) by amending section 5(c), which concerns private financial contributions to RFE/RL, by inserting after "a contribution to RFE/RL, Incorporated" the following: "(or any fund or foundation created for the purpose of receiving private contributions on behalf of RFE/RL, Incorporated, notwithstanding the provisions of the Privacy Act of 1974)." The Committee expects to receive no later than July 1, 1978, as promised during the April 13 hearings, a complete listing of financial contributions made by private individuals and organizations to RFE/RL, Inc. and to any of its related funds or foundations. Further, it is the Committee's understanding that this listing will include information dating from the establishment of the Board by the Congress in 1973.

In the report accompanying its appropriation recommendation for fiscal year 1978, the Committee, to ensure full participation by the Board in the financial decision-making process of RFE/RL for proper oversight over the expenditure of public funds, required specific, prior approval of the Board for any outside legal or professional consulting services engaged by RFE/RL. Such has not been the case, and the Committee is seriously disturbed by this evidence of neglect on the part of RFE/RL and by the high cost of legal and professional consulting services incurred to date for fiscal year 1978. The Committee, therefore, strongly reminds RFE/RL of its interest in this matter and additionally asks that henceforth the Board's specific, prior approval be obtained for every expenditure for outside legal assistance in excess of $2,000.

The Committee expects that upon receipt of the fiscal year 1978 supplemental request RFE/RL will promptly discharge its prior years' liabilities, amounting to $2,872,000 and including pension plan payments, accrued taxes and vendors' invoices, and report to the Board that such liabilities have indeed been liquidated.

Taking full cognizance of the fact that RFE/RL corporate finances appear finally to have been brought under control, the Committee commends the Board Chairman for the strong leadership he has brought to the Board by his continuing personal involvement and interest in matters of concern to the Board and the Congress.

Commission on Civil Rights

SALARIES AND EXPENSES

1978 appropriations to date	[1] 10,480,000
1979 budget estimate	10,752,000
House allowance	
Committee recommendation	10,752,000

[1] Excludes pending supplemental appropriation estimates of $446,000.

The Committee recommends an appropriation of $10,752,000, an increase of $272,000 over the 1978 appropriations to date. The amount recommended is the same as the budget estimate and is $10,752,000 over the amount allowed by the House; and will support a total of 288 permanent positions. The increase covers the cost of mandatory pay raises.

Commission on Security and Cooperation in Europe

SALARIES AND EXPENSES

1978 appropriations to date	$347,000
1979 budget estimate	[1] 521,000
House allowance	350,000
Committee recommendation	521,000

[1] Includes budget amendment of $171,000 transmitted in S. Doc. 95–113.

The Committee recommends an appropriation of 521,000, an increase of $174,000 over the 1978 appropriations to date. The amount recommended is the same as the budget estimate and $171,000 over the amount allowed by the House; and will support a total of 12 permanent positions.

The amount recommended includes $6,000 for official reception and representation expenses, the same as the amount approved for the current fiscal year.

Equal Employment Opportunity Commission

SALARIES AND EXPENSES

1978 appropriations to date	[1] $77,050,000
1979 budget estimate	110,000,000
House allowance	110,000,000
Committee recommendation	110,000,000

[1] Excludes pending supplemental appropriation estimates of $13,950,000.

The Committee recommends an appropriation of $110,000,000, an increase of $32,950,000 over the 1978 appropriations to date. The amount recommended is the same as the budget estimate and the same as the amount allowed by the House; and will support a total of 3,469 permanent positions.

The amount recommended by the Committee includes the designation of $15,000,000 for payments to State and local fair employment practices agencies (FEP's). This represents an increase of $4,600,000 over the current level, but is $7,000,000 less than the amount requested

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in the budget. The $7,000,000, which is included in the overall recommendation for EEOC, is to be used to increase headquarters systemic and managerial personnel and to service the increased case processing capacity of the district offices. This increase should enable the Commission to eliminate the backlog of cases and to keep the caseload current.

The Committee further recommends that none of the funds appropriated in this bill be awarded to State and local fair employment practice agencies, for charge processing or related activities, which lack statutory authority commensurate with the enforcement provisionus of title VII of the Civil Rights Act of 1964, as amended. This provision is not intended to prohibit EEOC from using appropriated funds to enter into contracts with tribal employment rights offices.

The Committee is concerned at the large numbers of Native Americans who remain beyond the reach of the benefits and assistance provided through the programs conducted by the Equal Employment Opportunity Commission. Too little attention and too few resources have been focused on the need for upgrading Native American employment rights and improving the economic opportunities of this important segment of the American population. The Committee, therefore, urges the Commission to redouble its efforts in this regard.

Federal Communication Commission

Salaries and Expenses

1978 appropriations to date	[1] **$61,400,000**
1979 budget estimate	[2] 68,196,000
House allowance	68,535,000
Committee recommendation	**70,446,000**

[1] Excludes pending supplemental appropriation estimates of $3,502,000.
[2] Includes budget amendment of $1,161,000 transmitted in House Document 95-331.

The Committee recommends an appropriation of $70,446,000, an increase of $9,046,000 over the 1978 appropriations to date. The amount recommended is $2,250,000 over the budget estimate and $1,911,000 over the amount allowed by the House; and will support a total of 2,308 permanent positions.

The Committee's recommendation will provide for a total of 177 additional positions. Funds are included for 11 positions and $697,000 for a "network inquiry"; 36 positions and $832,000 for additional workload in the common carrier area for issues involving rate and market structure and carrier accountability; 67 positions and $1,161,000 for the processing of fee refunds pursuant to the order of the District of Columbia Court of Appeals; and 5 positions and $750,000 to improve UHF television broadcasting.

The Committee believes that several common carrier matters pending before the Commission are so important that additional funds, over the budget request, are necessary to insure that the results of these Commission proceedings will be available in a timely fashion. The additional positions will enable accelerated completion of proceedings involving the uniform system of accounts, MTS–WATS, separations, and several related dockets.

No additional funds are being made available for administration of the pole attachment legislation, Public Law 95–234, because the Committee believes that positions can be made available from those presently assigned to the routine processing of cable television certificate of compliance (CAC) applications. The Commission testified that this application requirement could be replaced with a simple notification procedure. Enactment of Public Law 95–234 empowered the Commission to impose fines on cable operators who are in violation of Commission rules, and, hence it further obviates the need for the certification requirement.

Accordingly, the Committee believes the Commission should replace its CAC requirement with a simple notice process that will entail no regulatory delays or unnecessary paperwork burden and will require substantially fewer positions to administer. The 1,600 pending applications which could be treated as satisfying such notice process for those applicants. The positions made available by this change to a simple notice process can then be reassigned to the pole attachment activity to begin implementation of that legislation. This transfer of positions is intended as an economy measure and should not be used to delay implementation of the pole attachment legislation.

A major portion of the increase over the amount allowed by the House relates to the budget amendment involving 67 positions to begin to process fee refunds. These positions are not intended to be permanent as the need for them will cease when the refund process is completed.

The Committee has also inserted language in the bill as requested by the Commission, providing that not to exceed $35,000 may be used to provide commemorative stamp albums to delegates attending the 1979 World Administrative Radio Conference. This has been a traditional practice inasmuch as most of the radio organizations of other nations are part of their postal agency. Due to the increased representational requirements associated with this Conference, the Committee has also made a temporary increase in the limitation on such expenses to $5,000.

ACTION TO IMPROVE UHF

The Committee has also added $750,000 and 5 positions to the House allowance because it finds that the intent of the All Channel Receiver Act of 1962 has not been realized. UHF television broadcasting remains sorely disadvantaged within the national television system. The Committee directs that the Commission devise a plan for UHF to reach comparability with VHF in as short a time as practicable, and that the Commission devote the necessary resources to drafting such a plan in fiscal year 1978 until these additional resources become available in fiscal year 1979.

This plan should address all the technical and regulatory aspects of achieving parity and should set a schedule for dealing with each including dates for achieving specific goals, such as noise-level reductions. It should also include indications of the probable need for any legislation necessary to fulfill the plan. The Commission should submit

the plan to the Committee by December 31, 1978 and the Committee intends, at that time, to refer the plan to the Office of Technology Assessment for an independent evaluation.

Federal Maritime Commission

SALARIES AND EXPENSES

1978 appropriations to date	[1] $9,424,000
1979 budget estimate	10,530,000
House allowance	10,500,000
Committee recommendation	10,550,000

[1] Excludes pending supplemental appropriation estimates of $470,000.

The Committee recommends an appropriation of $10,550,000, an increase of $1,126,000 over the 1978 appropriations to date. The amount recommended is $20,000 over the budget estimate and $50,000 over the amount allowed by the House; and will support a total of 357 permanent positions.

The principal mission of the Federal Maritime Commission is to regulate rates and services of domestic and foreign common carriers engaged in U.S. ocean trade. The amount recommended will provide for nine additional positions, including three to establish a new district office in Hawaii, an increase in average employment, mandatory pay raises, and other nondiscretionary increases.

Federal Trade Commission

SALARIES AND EXPENSES

1978 appropriations to date	[1] $59,500,000
1979 budget estimate	66,485,000
House allowance	----------
Committee recommendation	65,900,000

[1] Excludes pending supplemental appropriation estimates of $3,068,000.

The Committee recommends an appropriation of $65,900,000, an increase of $6,400,000 over the 1978 appropriations to date. The amount recommended is $585,000 under the budget estimate and $65,900,000 over the amount allowed by the House; and will support a total of 1,744 permanent positions.

The Committee has been and continues to be supportive of those activities of the Federal Trade Commission that are in fulfillment of its statutorily assigned objectives.

It is also imperative that during the course of valid quasi-judicial deliberations the Commission be free to exercise judgments independent of legislative, executive, or citizen pressures.

The problem presented to this Committee, then, is that of a proper course of conduct when it perceives certain activities of the Federal Trade Commission as raising not just issues of budgetary priority but more importantly questions of Constitutional propriety.

Clearly the Committee is disturbed by the First Amendment (free speech) ramifications inherent in the FTC's proposed rulemaking for

children's advertising. And if by silence or an excess of discretion this Committee lends itself to an effort whereby government rather than the Constitution becomes the arbiter of what this nation will see, hear, and read, then have we not abdicated to an entity of our creation a portion of our Constitutional trusteeship? It is our position that if the question of how many cavities for how much freedom is to be considered seriously at all, then it should be done within the full (legislative, executive, judicial) Constitutional process and not as a matter belonging to regulatory rulings.

The Committee is also concerned that the Commission may dissipate its effectiveness by undertaking tasks that either fall within the jurisdiction of other Federal agencies or have by most reasonable standards a fairly low priority in terms of its overall objectives.

A case in point is the Commission proposal to initiate yet another investigation of the economic impact of agricultural marketing orders. This matter has been studied and/or analyzed by several governmental agencies including the Federal Trade Commission, the Department of Agriculture, the Department of Justice, the Office of Management and Budget, and the Cost of Living Council. Therefore, it is the Committee's view that no further funds for the study of marketing orders are necessary at this time.

The following compares the 1979 request and the amount recommended by the Committee:

Activities	Request		Committee recommendation	
	Positions	Amount	Positions	Amount
Maintaining competition	761	$29,746,000	756	$29,584,000
Consumer protection	821	30,932,000	810	30,509,000
Economic activities	178	5,807,000	178	5,807,000
Total	1,760	66,485,000	1,744	65,900,000

AUTOMOBILE INVESTIGATION

The Committee is concerned about the current FTC investigation of the structure, conduct and performance of the auto industry, and notes that the market for automobiles is international in scope. U.S. producers face competition from both domestic rivals and from producers abroad. It is appropriate, therefore, that the Commission in its investigation include an examination of the role and position of both the United States and foreign producers in the U.S. market. An investigation on a lesser scale would be incomplete and lack balance. In order to make such an evaluation, it is the Committee's view that the investigation should be expanded to include information from foreign manufacturers as well.

The Committee also is concerned about the burden of such an extended and detailed examination on the staff resources of smaller auto manufacturers. In pursuing its study, the Committee believes the FTC should give careful consideration to these cost factors and to the fact that these companies have relatively small shares of the market and low earnings.

REGULATION OF INSURANCE

Being aware that the McCarran-Ferguson Act, 15 U.S.C. 1011-1015, declares the continued regulation by the States of the business of insurance to be in the public interest, the Committee is concerned about the recent activities of the FTC relating to the possible Federal regulation of the life insurance business with respect to cost disclosure. By letter of July 13, 1978, the Chairman of the FTC advised the Chairman of this Committee that contrary to its earlier plans the FTC no longer contemplated initiation of Trade Regulation Rule proceedings on the subject of life insurance cost disclosures in fiscal year 1979, but rather would seek to encourage meaningful regulation of this area at the State level. The Committee does not disagree with the efforts of the Commission to work with the states, but directs that in no event should the Commission nor its staff attempt to impede or thwart the adoption by the States of the Model Life Insurance Cost Solicitation Regulation supported by the National Association of Insurance Commissioners.

Foreign Claims Settlement Commission

SALARIES AND EXPENSES

1978 appropriations to date	$920,000
1979 budget estimate	1,015,000
House allowance	(1,015,000)
Committee recommendation	(1,015,000)

The Committee recommends that the full amount requested for carrying out the activities of the Foreign Claims Settlement Commission be made available by transfer from the appropriation for "Payment of Vietnam Prisoners of War Claims". A total of $16,565,000 was appropriated for that program in fiscal years 1971, 1972, and 1973. Most of those claims have been paid and a balance in excess of $10,000,000 remains in the account. The Committee feels it is appropriate to transfer a portion of the funds to the regular program of the Foreign Claims Settlement Commission. The Commission is responsible for determining the claims of U.S. nationals against foreign governments for losses and injuries sustained by them. The only active program at the present time is the East German claims program, which is expected to be completed in fiscal year 1981.

The amount recommended will support a total of 33 permanent positions.

International Communication Agency

The Committee recommends a total of $413,309,000 for the activities of the International Communication Agency. This is virtually the full amount of the budget request for the Agency, and represents an increase of $48,736,600 over the amount appropriated to date for fiscal year 1978.

The International Communication Agency came into existence on April 1, 1978, as a result of Reorganization Plan No. 2 of 1977. It represents a combining and expansion of the functions previously carried

out by the U.S. Information Agency and the Bureau of Educational and Cultural Affairs of the Department of State. The new Agency conducts the international information functions of the United States—including Voice of America, overseas libraries and binational centers, press and video services—as well as educational and cultural exchange programs. It also advises the President, the National Security Council and the Secretary of State on these matters.

The funds recommended for the Agency are contained in the following four separate appropriation items.

SALARIES AND EXPENSES

1978 appropriations to date	[1] 330, 683, 400
1979 budget estimate	370, 318, 000
House allowance	
Committee recommendation	370, 300, 000

[1] Excludes pending supplemental appropriation estimates of $9,270,000.

The Committee recommends an appropriation of $370,300,000, an increase of $39,616,600 over the 1978 appropriations date. The amount recommended is $18,000 under the budget estimate and $370,300,000 over the amount allowed by the House, and will support a total of 8,285 permanent positions. While most of the increase over the current level is due to wage and price increases, funds are included for program increases totaling approximately $9,200,000. These include exchange of persons ($2,900,000), technological improvements in the Voice of America, including expanded satellite transmission, expansion of research capabilities, and of special international exhibitions in Eastern Europe, an increase in VOA weekly broadcasts by 45½ hours in 10 languages, and sorely needed improvements in wireless file transmission.

The Committee agrees with the House Committee on the item for an increase in the exchange of persons program. The $1,000,000 that is added to this program is for three purposes. The first purpose is to increase the regular exchange of persons program by $700,000. The second purpose is to allocate $150,000 to initiate a new pilot program for a university interchange, as envisioned by officials at Georgetown University. This program would have an appropriate university in the Nation's Capital arrange for educational and living costs for a student, with the foreign university doing the same in its country. The institutions would, in effect, have students exchange places. This would allow for the exchange of two persons at less than the cost of one person under the traditional grant method. The $150,000 would provide for institutional costs in the United States. The Committee recommends that $150,000 of the increase be used to permit the Institute of International Education to analyze and develop the pilot program into a demonstration program in other areas of the United States.

The Committee feels that the agency should review all its programs and operations to determine where the $1,000,000 reduction can be derived for application to the additional exchange of persons projects.

SALARIES AND EXPENSES (SPECIAL FOREIGN CURRENCY)

1978 appropriations to date	$8,657,000
1979 budget estimate	9,824,000
House allowance	
Committee recommendation	9,824,000

The Committee recommends an appropriation of $9,824,000, an increase of $1,167,000 over the 1978 appropriations to date. The amount recommended is the same as the budget estimate and $9,824,000 over the amount allowed by the House; and will support a total of 59 permanent positions.

The amount recommended covers the local cost of Agency operations in those countries where the Department of the Treasury has determined that the supply of United States-owned foreign currency is excess to the normal requirements of the U.S. Government. In fiscal year 1979 these countries are: Burma, Egypt, Guinea, India, and Pakistan.

CENTER FOR CULTURAL AND TECHNICAL INTERCHANGE BETWEEN EAST AND WEST

1978 appropriations to date	$12,200,000
1979 budget estimate	13,500,000
House allowance	
Committee recommendation	13,500,000

The Committee recommends an appropriation of $13,500,000, an increase of $1,300,000 over the 1978 appropriations to date. The amount recommended is the same as the budget estimate and $13,500,000 over the amount allowed by the House.

This account provides for maintenance and operation of the Center for Cultural and Technical Interchange between East and West (East-West Center) in Honolulu, Hawaii. The additional funds will permit the Center to increase its Environment and Policy Institute to an operational level sufficient to begin attracting research and development grants and other external funding. The President of the Center appeared before the subcommittee and made an appeal for expanding the Center's programs to accommodate the growing demand for exchange of educational, cultural, and technical skills. The Committee applauds the work of the Center and looks favorably on its continuing ability to provide this important service.

ACQUISITION AND CONSTRUCTION OF RADIO FACILITIES

1978 appropriations to date	$13,032,000
1979 budget estimate	19,685,000
House allowance	
Committee recommendation	19,685,000

The Committee recommends an appropriation of $19,685,000, an increase of $6,653,000 over the 1978 appropriations to date. The amount recommended is the same as the budget estimate and $19,685,000 over the amount allowed by the House.

The amount included will provide for completion of the augmentation projects in Liberia and the Philippines. It will also provide for continuation of engineering research designed to improve the Voice of America's broadcasting techniques and facilities compone

and maintenance and improvement of existing facilities including a new curtain antenna at the Greenville transmitting site and the first phase of an effort to automate and modernize the master control complex in Washington.

International Trade Commission

SALARIES AND EXPENSES

1978 appropriations to date	[1] $11,500,000
1979 budget estimate	13,113,000
House allowance	----------
Committee recommendation	13,100,000

[1] Excludes pending supplemental appropriation estimates of $713,000.

The Committee recommends an appropriation of $13,100,000, an increase of $1,600,000 over the 1978 appropriations to date. The amount recommended is $13,000 under the budget estimate and $13,100,000 over the amounts allowed by the House; and will support a total of 395 permanent positions.

The Committee's hearings vividly demonstrated that Commission decisions in antidumping and import injury cases have affected close to $5 billion worth of foreign commodities. Furthermore, because of the breadth and scope of 337 investigations the Committee is seriously concerned that the Commission does not have a sufficient staff of lawyers, translators, interpreters, and transcribers to carry out its mushrooming responsibilities. It is to be hoped that the Commission can meet all the responsibilities within the authorized level of positions; however, the Committee is concerned about this situation.

Japan-United States Friendship Commission

(JAPAN-UNITED STATES FRIENDSHIP TRUST FUND)

1978 appropriations to date	$1,000,000
1979 budget estimate	1,500,000
House allowance	1,500,000
Committee recommendation	1,500,000

The Committee recommends an appropriation of $1,500,000, an increase of $500,000 over the 1978 appropriations to date. The amount recommended is the same as the budget estimate and the same as the amount allowed by the House; and will support a total of 3 permanent positions.

For expenses of the Japan-United States Friendship Commission the Committee recommends the appropriation of $1,500,000 from interest earned on investment of funds in the Japanese-United States Friendship Trust Fund. In addition, an amount of Japanese currency not to exceed the equivalent of $1,000,000 is recommended. These amounts, which were requested by the Commission, represent an increase of $500,000 over the appropriation of interest for the current fiscal year. In accordance with Public Law 94–118, interest earned on investment of the principal in the trust fund is subject to the appropriations process. The amounts recommended by the Committee represent the program level planned by the Commission in fiscal year 1979. These funds are used for the promotion of scholarly, cultural and artistic activities between Japan and the United States.

LEGAL SERVICES CORPORATION

PAYMENT TO THE LEGAL SERVICES CORPORATION

1978 appropriations to date	$205,000,000
1979 budget estimate	304,000,000
House allowance	285,000,000
Committee recommendation	255,000,000

The amount recommended is the same as the amount included in the President's budget for fiscal year 1979. It is, however, $49,000,000 less than the amount requested by the Corporation, in accordance with the legislation that authorizes the Corporation to submit its budget directly to the Congress. The amount of the budget submitted by the Corporation for fiscal year 1979 was $304,000,000.

The $255,000,000 recommended is an increase of $50,000,000 over the appropriation to date for the current fiscal year. This increase will enable the Corporation to make significant progress toward providing minimum access to legal services for all poor people in the Nation.

Last year, the Committee indicated that the funding formula of the Legal Services Corporation did not adequately account for the extra costs of insuring access of the rural poor, particularly lost staffing time in traveling to meet clients. The Corporation's response to the Committee's concern has been very limited—while a small amount of money has been set aside for rural travel and telephone costs, it has not been distributed and the broader aspects of the Committee's concern have not been addressed. At the same time, the Corporation continues to give the highest priority to a minimum access goal that considers numbers of eligible clients and not the geography or population density so that underfunding of rural access will continue. The Committee expects that the Corporation will develop funding methods that take into account special access needs that may be shown by the study being conducted pursuant to section 1007(h) of the Legal Services Corporation Act. In the interim, the Corporation will use discretionary funds in a way that will promote meaningful access for eligible persons in sparsely populated areas.

The Legal Services Corporation Act, as amended, governs the legislative activities of legal services programs by prohibiting activities designed to influence legislation, except under three narrowly drawn provisions. Like section 607(a) of the Treasury, Postal Services, and General Government Appropriation Act with respect to legislation pending before Congress, a proviso inserted by the House has been retained in the bill to reinforce and clarify that funds appropriated be governed by the provisions of the Legal Services Corporation Act, as amended, when utilized for activities designed to influence legislation pending before State legislatures, as well as Congress.

The Committee believes the Legal Services Corporation should cooperate to the fullest extent possible with the bar associations in local communities. The Committee encourages the Corporation to locate staff attorneys in areas of the country where the local bar is either unwilling or unable to provide the most economical and effective delivery of legal assistance to the poor. In order to prevent dupli-

cation of services, however, the Committee encourages the Corporation not to locate staff attorneys in areas where the local bar is capable of providing the most economical and effective delivery of legal assistance to the poor.

Marine Mammal Commission

SALARIES AND EXPENSES

1978 appropriations to date	$900,000
1979 budget estimate	702,000
House allowance	702,000
Committee recommendation	840,000

The Committee recommends an appropriation of $840,000, a decrease of $60,000 under the 1978 appropriations to date. The amount recommended is $138,000 over the budget estimate and $138,000 over the amount allowed by the House; and will support a total of 10 permanent positions.

The Commission, which was established by the Marine Mammal Protection Act of 1972, conducts research and studies, coordinates national marine mammal research activities, makes recommendations to the Departments of Commerce, Interior, and State concerning means to conserve marine mammals domestically and internationally, and provides marine mammal policy review.

The increase recommended over the budget estimate reflects the Committee's view that there should be a more gradual transfer of research responsibilities, begun in fiscal year 1978, to the Departments of Commerce and Interior.

NATIONAL COMMISSION ON THE INTERNATIONAL YEAR OF THE CHILD

1978 appropriations to date	
1979 Budget estimate	[1] $1,360,000
House allowance	
Committee recommendation	

[1] Includes budget amendment of $1,360,000 transmitted in House Document 95–331.

The Committee has denied the request of $1,300,000 for the National Commission on the International Year of the Child.

The request would have provided for the expenses of the 25-member National Commission on the United Nations sponsored International Year of the Child and its 14 staff positions from October 1978 until its termination in June 1980. The Commission will promote national observance of the International Year of the Child and will focus attention on the needs of children in the United States and other countries through meetings, projects, studies, and other events.

Office of the Special Representative for Trade Negotiations

SALARIES AND EXPENSES

1978 appropriations to date	$2,680,000
1979 budget estimate	2,665,000
House allowance	2,665,000
Committee recommendation	2,665,000

The Committee recommends an appropriation of $2,665,000, a decrease of $15,000 under the 1978 appropriations to date. The amount

recommended is the same as the budget estimate and the amount allowed by the House; and will support a total of 41 permanent positions.

This office supervises and coordinates important aspects of the U.S. foreign trade policy in accordance with the Trade Act of 1974, consistent with overall international economic objectives. It administers the trade agreements program and directs U.S. participation in trade negotiations with other countries.

While the bill includes the full amount requested for the expenses of the Office of the Special Representative for Trade Negotiations the Committee has serious reservations about the efforts of this office with respect to the plight of certain domestic industries. The Committee has been assured of a more responsive attitude to its concerns.

Presidential Commission on World Hunger

SALARIES AND EXPENSES

1978 appropriations to date	
1979 budget estimate	[1] $1,500,000
House allowance	
Committee recommendation	1,500,000

[1] Includes budget amendment of $1,500,000 transmited in S. Doc. 95———.

The Committee recommends $1,500,000 to implement the new Presidential Commission on World Hunger that will make a new determination and a thorough assessment of United States programs involving hunger and malnutrition. The Commission will be composed of 20 persons, including 2 members of each House of Congress and will terminate on June 30, 1980, and will be consistent with House Resolution 784 and Senate Resolution 271 of the 95th Congress.

This Commission will be assisted by a staff of 20 and will review programs nationally and internationally to address world hunger and malnutrition.

Renegotiation Board

SALARIES AND EXPENSES

1978 appropriations to date	[1] $6,000,000
1979 budget estimate	7,277,000
House allowance	3,000,000
Committee recommendation	6,260,000

[1] Excludes pending supplemental appropriation estimates of $332,000.

The Committee recommends an appropriation of $6,260,000 to provide for the expenses of terminating the Renegotiation Board by May 31, 1979, two months later than the date approved by the House.

Contractors' liability to report their receipts and accruals to the Renegotiation Board under the Renegotiation Act of 1951 expired on September 30, 1976 and has not yet been extended beyond that date. S. 2791, as reported by the Committee on Banking, Housing, and Urban Affairs, would put the Board in abeyance unless the President declared that a national emergency existed requiring its establishment.

As a result of extensive hearings the Committee has concluded that the Board is not effective and by its emphasis on profits it is not an

incentive to reducing costs. The appropriation recommended by the Committee is for the Board's activities during the period October 1, 1978 through May 31, 1979, to allow the Board sufficient time to close its offices, transfer its property and records to the General Services Administration, and provide for the orderly termination of activities, including the payment of terminal leave and severance pay to eligible employees.

The amount recommended will support a total of 203 permanent positions for the first 8 months of fiscal 1979.

VINSON-TRAMMELL ACT

Since contractors' liability under the Renegotiation Act was allowed to expire on September 30, 1976, the profit limitation provisions of the Vinson-Trammell Act of 1934 (10 U.S.C. 2382, 7300) now applies to contracts and subcontracts for naval vessels and military aircraft. The act provides specifically for affected contractors and subcontractors to agree to pay any excess profit to the Treasury. "Excess profit" is defined as that portion in excess of 10 percent of the total contract price on naval vessels and 12 percent on military aircraft. The act is applied on a completed contract basis and is administered by the Secretary of the Treasury and the Secretaries of the military departments. Sec. 7–104.11 of the Armed Services Procurement Regulation requires that all military contracts in excess of $10,000 contain an "excess profits" clause which incorporates by reference the profit limitation provision of the Vinson-Trammell Act.

SECURITIES AND EXCHANGE COMMISSION

SALARIES AND EXPENSES

1978 appropriations to date	[1] $58,100,000
1979 budget estimate	64,800,000
House allowance	----------
Committee recommendation	64,650,000

[1] Excludes pending supplemental appropriation estimates of $4,425,000.

The Committee recommends an appropriation of $64,650,000, an increase of $6,550,000 over the 1978 appropriations to date. The amount recommended is $150,000 under the budget estimate and $64,650,000 over the amount allowed by the House and will support a total of 2,125 permanent positions.

The Commission, which was established by the Securities and Exchange Act of 1934, is an independent, quasi-judicial agency. It administers several statutes affecting securities and finance, which seek to protect investors by providing full disclosure, by regulating the Nation's securities markets, and by preventing and policing fraud and malpractices in the securities and financial markets. These statutes include, in addition to the 1934 Act, the Securities Act of 1933, the Public Utility Holding Act of 1935, the Trust Indenture Act of 1939, the Investment Company Act of 1940, and the Investment Advisers Act of 1940. Under the terms of chapter X of the National Bankruptcy Act, as amended, the Commission also serves as advisor to Federal courts in certain corporate reorganization proceedings in which there is substantial public interest.

The increase above the amount appropriated for fiscal year 1978 includes funds for 33 additional positions, for annualization of pay raises, for a reduced lapse rate which will provide for a 30 staff year increase in average employment, for within grade increases, and for other mandatory increases.

Small Business Administration

SALARIES AND EXPENSES

1978 appropriations to date	[1] $172,000,000
1979 budget estimate	165,100,000
House allowance	180,000,000
Committee recommendation	200,000,000

[1] Excludes pending supplemental appropriation estimates of $4,000,000.

The Committee recommends an appropriation of $200,000,000, an increase of $28,000,000 over the 1978 appropriations to date. The amount recommended is $34,900,000 over the budget estimate and $20,000,000 over the amount allowed by the House; and will support a total of 4,982 permanent positions.

This increase over the budget estimate reflects the Committee's continuing belief that the SBA should place a greater emphasis on the advocacy, economic research, procurement assistance, technical assistance, and management assistance programs. The Committee expects SBA to allocate a greater portion of their resources and personnel to these non-lending activities.

The level of funding closely follows H.R. 11445, as reported out of the Senate Small Business Committee after allowance is made for amendments to be offered by that Committee when H.R. 11445 is before the Senate, and is summarized as follows:

SUMMARY OF CONGRESSIONAL ACTION, FISCAL YEAR 1979 BUDGET

[Dollar amounts in thousands]

	Budget request		Change		House action		Change		Committee recommendation	
	Position	Amount	Position	Amount	Position	Amount	Position	Amount	Position	Amount
1. Procurement assistance	426	$12,958	+110	$2,175	536	$15,133	+17	+$3,739	553	$16,872
Procurement	411	11,888	+105	+2,070	516	13,958	+16	+2,742	532	16,700
Technology assistance	15	1,070	+5	+105	20	1,175	+1	+997	21	2,172
2. Management assistance	541	29,115	+107	+2,115	648	31,230	+21	+19,185	669	50,415
Management assistance	541	18,865	+107	+2,115	648	20,980	+21	+985	669	21,965
SBDC		2,250				2,250		+6,400		8,650
7(j)		8,000				8,000		+11,800		19,800
3. Finance and investment	1,868	44,086	+321	+5,951	2,189	50,037	−321	−5,951	1,868	44,086
4. Operations	24	835	+4	+79	28	914	−4	−79	24	835
5. General counsel	396	9,848	+36	+712	432	10,560	−36	−712	396	9,848
6. Administration	650	32,263	+51	+1,008	701	33,271	−51	−1,008	650	32,263
7. Planning and data management	101	5,283	+16	287	117	5,570			117	5,570
Planning	17	1,070			17	1,070			17	1,070
Data management	84	4,213	+16	+287	100	4,500			100	4,500
8. Advocacy and public communications	38	1,711	+11	+217	49	1,928	+35	+793	84	2,721
Advocacy	23	1,054	+11	+217	34	1,271	+35	+793	69	2,064
Public communications	15	657			15	657			15	657
9. Economic research	5	765	+8	+188	13	953	+59	+4,047	72	5,000
10. Congressional and legislative affairs	13	410			13	410			13	410
11. Minority small business	148	4,219	+26	+514	174	4,733	−24	−439	150	4,294
12. Civil rights	52	1,663	+4	+79	56	1,742			56	1,742
13. Executive direction	330	10,944	+24	+475	354	11,419	−24	−475	330	10,944
Subtotal	4,592	154,100	+718	+13,800	5,310	167,900	−328	+19,100	4,982	187,000
14. Disaster loanmaking		11,000		+1,100		[1] 12,100		+900		[1] 13,000
Total	4,592	165,100	+718	+14,900	5,310	180,000	−32	+20,000	4,982	200,000

[1] 82 MY's of DLM support provided by House. Additional 78 MY's by Senate. Not permanent positions.

The Committee is calling on SBA to make a significant shift in priorities. In the past, SBA has operated principally as a lending institution. The Committee strongly believes that the agency should become more business-development oriented. Over the last three decades, about 30 percent of all new enterprises failed within 1 year, while 50 percent went out of business within 2 years. These failures are due in large part to a lack of basic management and technical skills. SBA should play an integral role in assisting small businesses in this vital area.

In this regard, the Committee has endorsed an increase in the section 7(j) management assistance program known as call contracting. A significant portion of these funds are to be used by firms participating in the 8(a) minority business development program. Investigations by the General Accounting Office and congressional committees indicate that this program, which has provided over $2 billion in contracts to minority firms, has not developed viable private sector operations. One of the principal causes for this failure is a lack of management help for 8(a) firms. This $12 million increase over the budget request will provide 8(a) minority firms with the one-on-one counseling necessary for meaningful business development.

The Committee expresses particular interest in the advocacy function and economic research. The $7 million allocation represents a $5 million increase over the budget request. It reflects the Committee's strong desire for SBA to become a more effective advocate for small businesses within the Federal Government. All too often, the concerns of small businesses are an afterthought in the legislative and regulatory process. The Committee believes the SBA must develop the capabilities necessary to assess the impact of Government policies on small businesses and to advocate appropriate changes in regulations and legislation.

Furthermore, the Committee notes that an up to date small business economic data base is currently lacking. This information is essential if the Congress is to make informed judgments on changes regarding economic and tax policies, as well as other legislative and administrative areas affecting small business.

DECENTRALIZATION OF 8(a) PROGRAM

This Committee, as well as several others have held special hearings on the 8(a) program of assistance to minority businesses. These hearings have uniformally demonstrated that SBA's present efforts are woefully inadequate. While the SBA has eliminated many of the front organizations formerly allowed to participate in this program, little is being done to help the minority business firms obtain their rightful share of Government contracts.

The President has called upon Federal agencies to triple the amount of Government procurement awarded to minority businesses. This goal will never be reached at the present level of SBA effort. At the Committee's joint hearing with the Small Business Committee, the Administrator announced that he was immediately filling the 60 new 8(a) positions requested for 1979. The Committee was dismayed to

learn that 19 of the 60 positions were assigned to the Philadelphia region and only two to the Atlanta region where the several hearings have vividly demonstrated the inadequacy of the 8(a) effort. SBA allocated the 60 positions on the basis of the current number of 8(a) contractors in each region; a basis that underscores the Committee's findings that SBA is doing little to find additional contracting opportunities and to enlist more minority businesses into the program.

The Committee believes that a decentralized operation could provide significantly improved program results. Inasmuch as the hearings have indicated the severe need in region IV (Atlanta), the Committee has expanded the staff proposed for 8(a) by 16 additional positions so that a total of 31 will be available to carry out a pilot decentralized program in that region. The present regional office staff of 10 would be reduced to 4 and a business development specialist, a contract negotiator, and a clerk typist would be assigned to each of the 9 district offices within the region. The Committee expects a monthly report of the progress of this special effort, including the number of employees assigned to 8(a) at the regional and each district office, along with pertinent workload and program information.

SMALL BUSINESS DEVELOPMENT CENTERS

Currently, the SBA, on a pilot basis, funds eight business development centers. For fiscal year 1979, the Administration requested $2.25 million to fund this program. The Committee believes that the development center concept is sound and should be expanded, and $8 million is recommended for grants to assist States and cooperating universities in establishing new outreach programs.

The Committee struck language from the House bill imposing a limit of $300,000 on the funds available to any one State under this program. Such a limitation would be overly restrictive and could prove counterproductive. Title II of H.R. 11445, will establish firm guidelines and controls to avoid abuses in the program. The enactment of the authorizing measure is in the Committee's view, the proper way to proceed.

WHITE HOUSE CONFERENCE ON SMALL BUSINESS

1978 appropriations to date	----------
1979 budget estimate	----------
House allowance	----------
Committee recommendation	$4,500,000

On April 6, 1978, President Carter announced that he would call a White House Conference on Small Business, to be held in Washington, D.C. during the fall of 1979. The purpose of the Conference is to carefully identify the wide range of problems confronting small businesses and develop an agenda to address them.

Prior to the Washington meeting, a series of State and regional conferences are planned. Such forums will allow for the broadest participation by the Nation's citizenry.

The Committee recommends $4,500,000 be appropriated to cover the planning and administration of the Conference.

BUSINESS LOAN AND INVESTMENT FUND

1978 appropriations to date	**$605, 000, 000**
1979 budget estimate	**441, 000, 000**
House allowance	**641, 500, 000**
Committee recommended	368, 780, 000

The Committee recommends an appropriation of $368,780,000, a decrease of $236,220,000 from the 1978 appropriations to date. The amount recommended is $72,220,000 under the budget estimate and $272,720,000 under the amount allowed by the House.

The amount recommended by the Committee for additional capital for the Business Loan and Investment Fund reflects the loan levels proposed by the Committee on Small Business as well as the determination by the Senate in adopting the First Concurrent Budget Resolution to reduce direct lending and emphasize guaranteed loans. The loan levels projected in the budget and recommended by the loan levels authorized by the House and Committee are shown in the following table and will enable SBA to carry out a program level of $207,000,000 in direct and immediate participation loans and $4,397,000 in guaranteed loans.

[Amounts in millions]

Loan program	Budget proposal	House allowance	Committee recommendation
7(a) Business loans:			
Direct and immediate participation	$160	$350	$50
Guaranteed	3,069	3,300	4,000
Total	3,229	3,650	4,050
7(h) Handicapped loans:			
Direct and immediate participation	15	16	16
Guaranteed	5	6	6
Total	20	22	22
7(i) Economic opportunity loans:			
Direct and immediate participation	60	64	64
Guaranteed	60	64	64
Total	120	128	128
7(l) Energy loans:			
Direct and immediate participation			10
Guaranteed			2
Total			12
Development company loans:			
Direct and immediate participation	45	45	45
Guaranteed	41	41	200
Total	86	86	245
Investment company loans:			
Direct and immediate participation	20	22	22
Guaranteed	125	125	125
Total	145	147	147
Total business loan and investment fund:			
Direct and immediate participation	300	497	207
Guaranteed	3,300	3,536	4,397
Total	3,600	4,033	4,604

DISASTER LOAN FUND

1978 appropriations to date	[1] $2,265,000,000
1979 budget estimate	190,000,000
House allowance	230,000,000
Committee recommendation	230,000,000

[1] Includes supplemental appropriations of $2,150,000.

The Committee recommends an appropriation of $230,000,000 a decrease of $2,035,000,000 under the 1978 appropriations to date. The amount recommended is $40,000,000 over the budget estimate and the same as the amount allowed by the House.

The amount recommended will provide additional capital for the disaster loan fund. In order to cope with the large number of physical disasters in 1977 and 1978, such as droughts, floods and storms, a total of $2,265,000,000 was appropriated for the disaster loan fund for fiscal year 1978. If further disasters occur, additional funds will undoubtedly be required later in 1978 or 1979. The appropriation of $230,000,000 plus funds from other sources, primarily loan repayments, will provide for a total program of $350,000,000 in fiscal year 1979. Of that amount $250,000,000 is for the physical disaster loan program and $100,000,000 is for the nonphysical disaster loan program, including displaced business loans.

LEASE GUARANTEES REVOLVING FUND

1979 budget estimate	4,000,000
1979 budget estimate	4,000,000
House allowance	4,000,000
Committee recommendation	4,000,000

The Committee recommends an appropriation of $4,000,000, the same as the 1978 appropriations to date. The amount recommended is the same as the budget estimate and the same as the amount allowed by the House and provides additional capital for the lease guarantees revolving fund. No new program obligations are to be charged to this fund in fiscal year 1979, but the additional capital is needed in order to honor claims of prior year obligations.

SURETY BOND GUARANTEES RESOLVING FUND

1978 appropriations to date	$47,000,000
1979 budget estimate	27,000,000
House allowance	35,000,000
Committee recommendation	43,000,000

The Committee recommends an appropriation of $43,000,000, a decrease of $4,000,000 below the 1978 appropriations to date. The amount recommended is $16,000,000 over the budget estimate and $8,000,000 over the amount allowed by the House and provides additional capital for surety bond guarantees. These funds will enable the Small Business Administration to provide surety bonds for contracts totaling $3,000,000,000 in fiscal year 1979.

U.S. Metric Board

SALARIES AND EXPENSES

1978 appropriations to date	[1]
1979 budget estimate	[2] $1,800,000
House allowance	
Committee recommendation	1,800,000

[1] Excludes pending supplemental appropriation estimates of $365,000.
[2] Includes budget amendment of $1,800,000 transmitted in House Document 95–331.

The Committee recommends an appropriation of $1,800,000, the full amount requested in the budget estimate which was not considered by the House.

This request would provide funds to combine establishment of staff and for preliminary operations of the 17 member Metric Board. The Metric Conversion Act of 1975 (Public Law 94–168) established the Board to coordinate the voluntary conversion of the United States to the metric system.

The staff will be distributed among the following programs: public information (8); coordination and planning (11); intergovernmental (10); general support/research (6).

BUDGETARY IMPACT OF H.R. 12934 [1]

[Dollars in millions]

	Budget authority		Outlays	
	Committee allocation	Amount in bill	Committee allocation	Amount in bill
I. Comparison of amounts in the bill with the committee allocation to its subcommittees of amounts in the First Concurrent Resolution for 1979: Subcommittee on State, Justice, Commerce, the Judiciary and related agencies	10,200	8,635	10,500	[3] 11,093
II. Summary of functional category of 1979 budget amounts recommended in the bill:				
050—National Defense		6		[2] 6
150—International Affairs		1,773		1,695
300—Natural Resources and Environment		754		[3] 723
370—Commerce and Housing Credit		1,452		[3] 1,365
400—Transportation		242		[3] 574
450—Community and Regional Development		1,053		[3] 3,353
750—Administration of Justice		3,351		[2] 3,370
800—General Government		3		3
III. Financial assistance to State and local governments for 1979 in the bill		933		209
IV. Projections of outlays associated with budget authority recommended in the bill:				
1979				[3 4] 5,550
1980				1,335
1981				896
1982				183
1983				71
Future year				

[1] Prepared by the Congressional Budget Office pursuant to sec. 308a, Public Law 93–344.
[2] Includes outlays from prior year budget authority.
[3] Excludes outlays from prior year budget authority.
[4] Excludes $275,000,000 in appropriation to liquidate contract authority for Maritime Administration (operating-differential subsidies).

ADDITIONAL VIEWS OF SENATORS PATRICK J. LEAHY AND WARREN G. MAGNUSON

On June 9, 1978 the Senate Appropriations Subcommittee on State, Justice and Commerce agreed to report to the full Appropriations Committee its recommendations on the budget for these agencies. The subcommittee in its markup agreed that its recommendations would include a 25-percent cut in the personnel increase requested by the FTC. Accompanying this cut was a direction that the subcommittee report contain language reprimanding the Federal Trade Commission for its investigation into children's advertising. Although this cut and language were not intended to prohibit the FTC from continuing its investigation into the effects of advertising directed at children, they were intended to be a strong message of concern to the agency about its investigation.

We disagreed with the cut and the language when this subcommittee "marked-up" the budget and we disagree with it now.

The report language introduced by Mr. Weicker expressing the view that broadcasters' first amendment rights were threatened by the FTC's inquiry into television advertising directed to children is a valid concern. However, Mr. Weicker's language raises some fundamental questions. We do not understand why an FTC inquiry into advertising to children becomes "an effort whereby government rather than the constitution becomes the arbiter of what this Nation will see, hear and read." Anyone who has studied the FTC's procedures developed under authority granted by this Congress recognizes there are sufficient, even extraordinary, opportunities for due process in those FTC proceedings. The courts have regularly reviewed such proceedings and insured that all parties have their opportunity to speak. The courts have upheld the concept of regulatory rulings as being within the "constitutional process."

We are aware that in matters pertaining to children and commercial practices, both the general welfare clauses of the constitution and the first amendment thereto, may have to be weighed. In commercial law, both parties are presumed to be prudent, and any unfairness or deception is considered against this standard. But in the advertising of products to children aged 4, 5, and 6, the receiver of the advertising message can be presumed to be imprudent. The basic questions then arise: what responsibility is placed on the conveyor of an advertising message? For the youngest children, does their probable noncomprehension of the selling purpose of an advertisement render it impossible to be fair in commercial communication to them? If the FTC moves to protect children in this instance, children's welfare must be juxtaposed with a broadcaster's rights to air commercial messages.

For older children, does their probable noncomprehension of the omission of nutritional and dental facts in the 10,000 food commercials seen yearly render the commercials unfair to the child audience?

Again, children's welfare must be juxtaposed with broadcasters' rights to air messages devoid of nutritional and dental facts.

We are certain that the courts ultimately will have to decide if children's welfare warrants constraints on certain types of advertising. If the FTC finds that children can be protected by certain restraints and devices short of a ban, the first amendment issue is almost moot. In any event, this is a matter for the highest courts to decide. It is not for an Appropriation Subcommittee to prejudge. We believe the only fair and just basis for the courts to make such a ruling is for the FTC to proceed with its announced inquiry, subject to its own built in checks and balances. The Chairman of the FTC has confirmed to our satisfaction that the Commission will explore every aspect of children's vulnerability as well as every alternative remedy to protect children if such protection is found to be warranted.

We underscore for the FTC Senator Weicker's language on June 9 at our subcommittee meeting. He said: "We are sending a strong message to the FTC. But we are concerned with false and deceptive advertising in the eyes of the viewer."

This must be recognized by the FTC as it scrutinizes unfair and deceptive advertising. With children, it is their perception, their understanding or misunderstanding that should become the major determinant of whether a commercial practice is unfair, false or deceptive. Children witness some 4,200 minutes of edible product advertising a year. This has some impact on them and on society. Let us find out through carefully designed hearings at the FTC what the consequences are.

With sponsors and broadcasters funneling over 20,000 polished commercials into a typical American child's mind each year, a nonparental influence of some magnitude is being exercised on the Nation's young. We should learn if this is a constructive educational process or a deleterious and undermining one. If it is the former, few FTC controls are anticipated. If the latter, the FTC will recommend how to alert parents as well as children to the inadequacy of the present messages coming with such force into the American home. As parents, we will benefit from such an inquiry in that we will understand better the scope of the problem and how to convey such understanding to our children.

Whether or not the FTC is the appropriate regulatory body to conduct such an inquiry has also been questioned. Chairman Hollings has suggested that the Congress look into this matter in legislative hearings.

With regard to possible FTC/FDA overlap, we would raise the following points. The FDA recognizes that while the ingredients of a food may be declared safe for human consumption, the advertising of such food may be grossly unfair and deceptive. Protein supplements are a classic case in point. The FDA also has recognized that while certain foods have been declared safe, excessive consumption of certain types of safe foods can be dangerous. Salt is an example to those suffering from hypertension. The FDA is on record as supporting the FTC's entry into this issue of children's advertising.

While we are interested in a congressional review of the issues involved with children's advertising, we do believe this holding precludes

the FTC from investigating this very complicated and important problem. The Congress created the FTC and gave it rulemaking powers. Monitoring fair business practices is one of its mandates. With children now being the object of extensive commercial solicitation, it is more than appropriate that the FTC extend its procedures to them. If anything, the FTC is tardy in its attention to children and other vulnerable audiences.

Instead of obstructing the FTC, we think this subcommittee should have followed a policy of encouragement of FTC's. Chairman Hollings in last year's budget hearings, discussed consumer protection for the poor with ex-Chairman Collier. Advised of the FTC's plans, Senator Hollings said, "This is a valid area of investment of personnel. We get into the children's area, which is the perfect area for you to get into. It is never going to be gotten into otherwise."

Later, in our Committee Report, on the State, Justice, Commerce, the Judiciary, and Related Agencies Appropriation Act for fiscal year 1978, the Committee reinforced this message, saying:

> The Committee shares the Commission's growing concern about the effects of advertising on children. The Committee therefore encourages the Commission to review its current expenditures to determine if sufficient funds can be made available from fiscal year 1977 resources to implement a viable program in this critical area (p. 53).

It is for the above reasons that we obect to the subcommittee's cutting of the FTC funds and the inclusion of the reprimand in this report.

PATRICK J. LEAHY
WARREN G. MAGNUSON

COMPARATIVE STATEMENT OF NEW BUDGET (OBLIGATIONAL) AND AMOUNTS RECOMMENDED IN

[Amounts

Item	1978 Appropriation	Budget estimate
TITLE I - DEPARTMENT OF STATE		
Administration of Foreign Affairs		
Salaries and expenses	603,577,000	662,117,000
Representation allowances	2,500,000	2,900,000
Acquisition, operation, and maintenance of buildings abroad	103,101,000	118,644,000
Acquisition, operation, and maintenance of buildings abroad (special foreign currency program)	7,520,000	6,025,000
Emergencies in the diplomatic and consular service	2,350,000	2,350,000
Payment to the Foreign Service retirement and disability fund	26,599,000	38,107,000
Total, administration of foreign affairs	745,647,000	830,143,000
International Organizations and Conferences		
Contributions to international organizations	325,979,000	355,392,000
Contributions for international peacekeeping activities	27,000,000	32,000,000
Missions to international organizations	10,144,000	12,072,000
International conferences and contingencies	8,000,000	8,600,000
International trade negotiations	3,800,000	4,717,000
Total, international organizations and conferences	374,923,000	412,781,000
International Commissions		
International Boundary and Water Commission, United States and Mexico:		
Salaries and expenses	6,300,000	6,840,000
Construction	17,000,000	3,068,000
American sections, international commissions	2,232,000	2,553,000
International fisheries commissions	5,745,000	6,612,000
Total, international commissions	31,277,000	19,073,000
Total, title I, new budget (obligational) authority, Department of State	1,151,847,000	1,262,897,000
TITLE II - DEPARTMENT OF JUSTICE		
General Administration		
Salaries and expenses	26,067,000	28,996,000
Legal Activities		
Salaries and expenses, general legal activities	77,520,000	89,884,000
Salaries and expenses, Antitrust Division	41,008,000	46,377,000
Salaries and expenses, U.S. attorneys and marshals	179,075,000	196,736,000
Support of U.S. prisoners	21,000,000	25,100,000

AUTHORITY FOR FISCAL YEAR 1978 AND BUDGET ESTIMATES THE BILL FOR FISCAL YEAR 1979

[In dollars]

House allowance	Committee recommendation	Increase (+) or decrease (−) compared with—		
		1978 Appropriation	Budget estimate	House allowance
---	561,000,000	+57,423,000	-1,117,000	+561,000,000
---	2,900,000	+400,000	---	+2,900,000
---	125,000,000	+21,899,000	+6,356,000	+125,000,000
---	6,025,000	-1,495,000	---	+6,025,000
---	2,350,000	---	---	+2,350,000
---	38,107,000	+11,508,000	---	+38,107,000
---	835,382,000	+89,735,000	+5,239,000	+835,382,000
---	355,392,000	+29,413,000	---	+355,392,000
---	27,000,000	---	-5,000,000	+27,000,000
---	12,000,000	+1,856,000	-72,000	+12,000,000
---	8,000,000	---	-600,000	+8,000,000
---	4,717,000	+917,000	---	+4,717,000
---	407,109,000	+32,186,000	-5,672,000	+407,109,000
---	6,800,000	+500,000	-40,000	+6,800,000
---	3,900,000	-13,100,000	-68,000	+3,900,000
---	2,500,000	+268,000	-53,000	+2,500,000
---	6,600,000	+855,000	-12,000	+6,600,000
---	19,800,000	-11,477,000	-173,000	+19,800,000
---	1,262,291,000	+110,444,000	-606,000	+1,262,291,000
---	27,774,000	+1,707,000	-1,222,000	+27,774,000
---	89,884,000	+12,364,000	---	+89,884,000
---	46,377,000	+5,369,000	---	+46,377,000
---	196,700,000	+17,625,000	-36,000	+196,700,000
---	25,100,000	+4,100,000	---	+25,100,000

COMPARATIVE STATEMENT OF NEW BUDGET (OBLIGATIONAL) AND AMOUNTS RECOMMENDED IN THE

[Amounts

Item	1978 Appropriation	Budget estimate
Fees and expenses of witnesses	20,050,000	20,144,000
Salaries and expenses, Community Relations Service	5,192,000	5,353,000
Total, legal activities	343,865,000	383,596,000
Federal Bureau of Investigation		
Salaries and expenses	529,454,000	556,750,000
Immigration and Naturalization Service		
Salaries and expenses	266,450,000	298,019,000
Drug Enforcement Administration		
Salaries and expenses	181,895,000	192,053,000
Federal Prison System		
Salaries and expenses, Bureau of Prisons	259,576,000	312,179,000
National Institute of Corrections	9,900,000	9,943,000
Buildings and facilities	38,850,000	37,080,000
Federal Prison Industries, Incorporated: (Limitation on administrative and vocational training expenses)	(6,328,000)	(5,081,000)
Total, Federal prison system	308,326,000	359,202,000
Law Enforcement Assistance Administration		
Salaries and expenses	644,582,000	651,488,000
Total, title II, Department of Justice: New budget (obligational) authority	2,300,619,000	2,471,002,000
(Limitation on expenses)	(6,328,000)	(5,081,000)
TITLE III - DEPARTMENT OF COMMERCE		
General Administration		
Salaries and expenses	15,750,000	23,172,000
Special foreign currency program	---	500,000
White House Conference on Balanced National Growth and Economic Development	750,000	---
Total, General Administration	16,500,000	23,672,000
Bureau of the Census		
Salaries and expenses	45,235,000	50,745,000
Periodic censuses and programs	78,000,000	237,355,000
Total, Bureau of the Census	123,235,000	288,100,000

AUTHORITY FOR FISCAL YEAR 1978 AND BUDGET ESTIMATES BILL FOR FISCAL YEAR 1979—Continued

in dollars]

House allowance	Committee recommendation	Increase (+) or decrease (−) compared with—		
		1978 Appropriation	Budget estimate	House allowance
---	20,000,000	−50,000	−144,000	+20,000,000
---	5,353,000	+161,000	---	+5,353,000
---	383,414,000	+30,569,000	−180,000	+383,414,000
---	558,750,000	+20,296,000	+2,000,000	+558,750,000
---	299,800,000	+33,350,000	+1,781,000	+299,800,000
192,953,000	192,953,000	+11,058,000	---	---
---	315,200,000	+55,624,000	+3,021,000	+315,200,000
---	9,920,000	+20,000	−23,000	+9,920,000
---	35,280,000	−3,570,000	−1,800,000	+35,280,000
---	(5,081,000)	(−1,247,000)	---	(+5,081,000)
---	360,400,000	+52,074,000	+1,198,000	+360,400,000
641,488,000	661,488,000	+16,006,000	+10,000,000	+20,000,000
834,441,000	2,484,579,000	+183,960,000	+13,577,000	+1,650,138,000
---	(5,081,000)	(−1,247,000)	---	(+5,081,000)
24,335,000	25,025,000	+9,275,000	+1,853,000	+690,000
---	---	---	−500,000	---
---	---	−750,000	---	---
24,335,000	25,025,000	+8,525,000	+1,353,000	+690,000
48,594,000	49,835,000	+4,600,000	−910,000	+1,241,000
175,000,000	199,200,000	+121,200,000	−38,155,000	+24,200,000
223,594,000	249,035,000	+125,800,000	−39,065,000	+25,441,000

COMPARATIVE STATEMENT OF NEW BUDGET (OBLIGATIONAL) AND AMOUNTS RECOMMENDED IN THE

[Amounts

Item	1978 Appropriation	Budget estimate
Economic and Statistical Analysis		
Salaries and expenses	13,475,000	16,975,000
Economic Development Administration		
Economic development assistance programs	382,500,000	627,425,000
(By transfer)	---	---
Local public works program	---	10,607,000
Administration of economic development assistance programs	26,825,000	28,827,000
Economic development revolving fund	---	---
Total, Economic Development Administration	409,325,000	666,859,000
Regional Action Planning Commissions		
Regional development programs	64,600,000	63,876,000
Industry and Trade Administration		
Operations and administration	65,947,000	59,733,000
Minority Business Enterprise		
Minority business development	50,300,000	60,559,000
United States Travel Service		
Salaries and expenses	14,190,000	14,543,000
National Oceanic and Atmospheric Administration		
Operations, research, and facilities	607,506,000	661,167,000
(By transfer)	---	---
Construction	15,500,000	44,000,000
Coastal zone management	50,922,000	57,279,000
Coastal energy impact fund	115,000,000	4,036,000
Total, National Oceanic and Atmospheric Administration	788,828,000	766,482,000
National Fire Prevention and Control Administration		
Operations, research, and administration	13,950,000	17,826,000
Patent and Trademark Office		
Salaries and expenses	89,500,000	94,753,000
Science and Technical Research		
Scientific and technical research and services	72,416,000	95,520,000

AUTHORITY FOR FISCAL YEAR 1978 AND BUDGET ESTIMATES BILL FOR FISCAL YEAR 1979—Continued

[In dollars]

House allowance	Committee recommendation	Increase (+) or decrease (−) compared with—		
		1978 Appropriation	Budget estimate	House allowance
16,080,000	16,875,000	+3,400,000	---	+795,000
484,325,000	697,775,000	+315,275,000	+70,350,000	+213,450,000
(4,600,000)	(4,600,000)	(+4,600,000)	(+4,600,000)	---
---	10,600,000	+10,600,000	-7,000	+10,600,000
28,690,000	29,950,000	+3,125,000	+1,123,000	+1,260,000
(58,000,000)	---	---	---	(-58,000,000)
513,015,000	738,325,000	+329,000,000	+71,466,000	+225,310,000
62,800,000	62,800,000	-1,800,000	-1,076,000	---
68,175,000	72,500,000	+6,553,000	+2,767,000	+4,325,000
58,000,000	57,965,000	+7,665,000	-2,594,000	-35,000
13,500,000	13,800,000	-390,000	-743,000	+300,000
651,770,000	675,800,000	+68,294,000	+14,633,000	+24,030,000
(5,000,000)	---	---	---	(-5,000,000)
---	---	-15,500,000	-44,000,000	---
57,200,000	57,600,000	+6,778,000	+321,000	+400,000
---	4,000,000	-111,000,000	-36,000	+4,000,000
708,970,000	737,400,000	-51,428,000	-29,082,000	+28,430,000
---	18,300,000	+4,450,000	+474,000	+18,300,000
93,600,000	93,600,000	+4,100,000	-1,153,000	---
---	88,150,000	+15,734,000	-7,370,000	+88,150,000

COMPARATIVE STATEMENT OF NEW BUDGET (OBLIGATIONAL) AND AMOUNTS RECOMMENDED IN THE

[Amounts

Item	1978 Appropriation	Budget estimate
National Telecommunications and Information Administration		
Salaries and expenses	4,763,000	11,981,000
Maritime Administration		
Ship construction	135,000,000	157,000,000
Operating-differential subsidies (appropriation to liquidate contract authority)	(352,000,000)	(262,800,000)
Research and development	18,325,000	17,500,000
Operations and training	54,200,000	57,328,000
Total, Maritime Administration	207,525,000	231,828,000
Total, title III, Department of Commerce: New budget (obligational) authority	1,934,454,000	2,422,607,000
(Liquidation of contract authorization)	(352,000,000)	(262,800,000)
TITLE IV - THE JUDICIARY		
Supreme Court of the United States		
Salaries and expenses	8,391,000	9,430,000
Care of the building and grounds	800,000	1,450,000
Total, Supreme Court of the United States	9,191,000	10,880,000
Court of Customs and Patent Appeals		
Salaries and expenses	1,020,000	1,099,000
Customs Court		
Salaries and expenses	2,907,000	3,055,000
Court of Claims		
Salaries and expenses	3,000,000	3,574,000
Courts of Appeals, District Courts, and other Judicial Services		
Salaries of judges	39,700,000	40,258,000
Salaries of supporting personnel	148,400,000	167,077,000
Defender services	24,000,000	24,800,000
Fees of jurors and commissioners	23,250,000	23,250,000
Travel and miscellaneous expenses	27,600,000	32,274,000
Salaries and expenses of magistrates	17,500,000	19,471,000
Salaries and expenses of referees	33,500,000	35,315,000
Space and facilities	89,700,000	99,577,000

AUTHORITY FOR FISCAL YEAR 1978 AND BUDGET ESTIMATES BILL FOR FISCAL YEAR 1979—Continued

[In dollars]

House allowance	Committee recommendation	Increase (+) or decrease (−) compared with—		
		1978 Appropriation	Budget estimate	House allowance
10,955,000	12,000,000	+7,237,000	+19,000	+1,035,000
---	157,000,000	+22,000,000	---	+157,000,000
---	(250,000,000)	(−102,000,000)	(−12,800,000)	(+250,000,000)
---	17,500,000	−825,000	---	+17,500,000
---	57,150,000	+2,950,000	−178,000	+57,150,000
---	231,650,000	+24,125,000	−178,000	+231,650,000
1,793,034,000	2,417,425,000	+682,971,000	−5,182,000	+624,391,000
---	(250,000,000)	(−102,000,000)	(−12,800,000)	(+250,000,000)
8,960,000	9,718,000	+1,327,000	+288,000	+758,000
999,600	1,450,000	+650,000	---	+450,400
9,959,600	11,168,000	+1,977,000	+288,000	+1,208,400
1,099,000	1,099,000	+79,000	---	---
3,055,000	3,055,000	+148,000	---	---
3,520,000	3,520,000	+520,000	−54,000	---
40,258,000	40,258,000	+558,000	---	---
164,300,000	166,195,000	+17,795,000	−882,000	+1,895,000
24,800,000	24,800,000	+800,000	---	---
20,750,000	20,750,000	−2,500,000	−2,500,000	---
31,700,000	31,914,000	+4,314,000	−360,000	+214,000
18,400,000	19,441,000	+1,941,000	−30,000	+1,041,000
35,300,000	35,300,000	+1,800,000	−15,000	---
99,400,000	99,400,000	+9,700,000	−177,000	---

COMPARATIVE STATEMENT OF NEW BUDGET (OBLIGATIONAL) AND AMOUNTS RECOMMENDED IN THE

[Amounts

Item	1978 Appropriation	Budget estimate
Furniture and furnishings	7,500,000	8,616,000
Pretrial services agencies, the Judiciary	---	5,000,000
Total, courts of appeals, district courts, and other judicial services	411,150,000	455,638,000
Administrative Office of the United States Courts		
Salaries and expenses	10,500,000	12,562,000
Federal Judicial Center		
Salaries and expenses	6,550,000	8,744,000
Total, title IV, new budget (obligational) authority, the Judiciary	444,318,000	495,552,000
TITLE V - RELATED AGENCIES		
Arms Control and Disarmament Agency		
Arms control and disarmament activities	13,600,000	16,395,000
Board for International Broadcasting		
Grants and expenses	65,900,000	85,180,000
Commission on Civil Rights		
Salaries and expenses	10,480,000	10,752,000
Commission on Security and Cooperation in Europe		
Salaries and expenses	347,000	521,000
Equal Employment Opportunity Commission		
Salaries and expenses	77,050,000	110,000,000
Federal Communications Commission		
Salaries and expenses	61,400,000	68,196,000
Federal Maritime Commission		
Salaries and expenses	9,424,000	10,530,000
Federal Trade Commission		
Salaries and expenses	59,500,000	66,485,000
Foreign Claims Settlement Commission		
Salaries and expenses	920,000	1,015,000
(By transfer)	---	---

AUTHORITY FOR FISCAL YEAR 1978 AND BUDGET ESTIMATES BILL FOR FISCAL YEAR 1979—Continued

[In dollars]

House allowance	Committee recommendation	Increase (+) or decrease (−) compared with—		
		1978 Appropriation	Budget estimate	House allowance
8,500,000	8,500,000	+1,000,000	−116,000	---
---	5,000,000	+5,000,000	---	+5,000,000
443,408,000	451,558,000	+40,408,000	−4,080,000	+8,150,000
12,250,000	12,250,000	+1,750,000	−312,000	---
8,025,000	8,025,000	+1,475,000	−719,000	---
481,316,600	490,675,000	+46,357,000	−4,877,000	+9,358,400
---	16,395,000	+2,795,000	---	+16,395,000
---	85,000,000	+19,100,000	−180,000	+85,000,000
---	10,752,000	+272,000	---	+10,752,000
350,000	521,000	+174,000	---	+171,000
110,000,000	110,000,000	+32,950,000	---	---
68,535,000	70,446,000	+9,046,000	+2,250,000	+1,911,000
10,500,000	10,550,000	+1,126,000	+20,000	+50,000
---	65,900,000	+6,400,000	−585,000	+65,900,000
---	---	−920,000	−1,015,000	---
(1,015,000)	(1,015,000)	(+1,015,000)	(+1,015,000)	---

COMPARATIVE STATEMENT OF NEW BUDGET (OBLIGATIONAL)
AND AMOUNTS RECOMMENDED IN THE

[Amounts

Item	1978 Appropriation	Budget estimate
International Communication Agency		
Salaries and expenses	330,683,400	370,318,000
Salaries and expenses (special foreign currency)	8,657,000	9,824,000
Center for cultural and technical interchange between East and West	12,200,000	13,500,000
Acquisition and construction of radio facilities	13,032,000	19,685,000
Total, International Communication Agency	364,572,400	413,327,000
International Trade Commission		
Salaries and expenses	11,500,000	13,113,000
Japan - United States Friendship Commission		
Japan - United States Friendship Trust Fund	1,000,000	1,500,000
(Foreign currency appropriation)	(1,000,000)	(1,000,000)
Legal Services Corporation		
Payment to the Legal Services Corporation	205,000,000	304,000,000
Marine Mammal Commission		
Salaries and expenses	900,000	702,000
National Commission on the International Year of the Child		
Salaries and expenses	---	1,360,000
Office of the Special Representative for Trade Negotiations		
Salaries and expenses	2,690,000	2,665,000
Presidential Commission on Hunger		
Salaries and expenses	---	1,500,000
Renegotiation Board		
Salaries and expenses	6,000,000	7,277,000
Securities and Exchange Commission		
Salaries and expenses	58,100,000	64,800,000
Small Business Administration		
Salaries and expenses	172,000,000	165,100,000
White House Conference on Small Business	---	---
Business loan and investment fund	605,000,000	441,000,000
Disaster loan fund	2,265,000,000	190,000,000

AUTHORITY FOR FISCAL YEAR 1978 AND BUDGET ESTIMATES BILL FOR FISCAL YEAR 1979—Continued

[In dollars]

House allowance	Committee recommendation	Increase (+) or decrease (—) compared with—		
		1978 Appropriation	Budget estimate	House allowance
---	370,300,000	+39,616,600	-18,000	+370,300,000
---	9,824,000	+1,167,000	---	+9,824,000
---	13,500,000	+1,300,000	---	+13,500,000
---	19,685,000	+6,653,000	---	+19,685,000
---	413,309,000	+48,736,600	-18,000	+413,309,000
---	13,100,000	+1,600,000	-13,000	+13,100,000
1,500,000	1,500,000	+500,000	---	---
(1,000,000)	(1,000,000)	---	---	---
285,000,000	255,000,000	+50,000,000	-49,000,000	-30,000,000
702,000	840,000	-60,000	+138,000	+138,000
---	---	---	-1,360,000	---
2,665,000	2,665,000	-15,000	---	---
---	1,500,000	+1,500,000	---	+1,500,000
3,000,000	6,260,000	+260,000	-1,017,000	+3,260,000
---	64,650,000	+6,550,000	-150,000	+64,650,000
180,000,000	200,000,000	+28,000,000	+34,900,000	+20,000,000
---	4,500,000	+4,500,000	+4,500,000	+4,500,000
641,500,000	368,780,000	-236,220,000	-72,220,000	-272,720,000
230,000,000	230,000,000	-2,035,000,000	+40,000,000	---

COMPARATIVE STATEMENT OF NEW BUDGET (OBLIGATIONAL)
AND AMOUNTS RECOMMENDED IN THE

[Amounts

Item	1978 Appropriation	Budget estimate
Lease guarantees revolving fund	4,000,000	4,000,000
Surety bond guarantees revolving fund	47,000,000	27,000,000
Total, Small Business Administration	3,093,000,000	827,100,000
United States Metric Board		
Salaries and expenses	---	1,800,000
Total, title V, new budget (obligational) authority, related agencies	4,041,373,400	2,008,218,000
Subtotal, titles I, II, III, IV and V: New budget (obligational) authority	9,872,611,400	8,660,276,000
Sec. 605 general reduction, 2 percent (estimate)	---	---
Grand total, titles I, II, III, IV and V: New budget (obligational) authority	9,872,611,400	8,660,276,000
RECAPITULATION		
Grand total, titles I, II, III, IV and V: New budget (obligational) authority	9,872,611,400	8,660,276,000
(Limitation on expenses)	(6,328,000)	(5,081,000)
(By transfer)	---	---
Memoranda: (Appropriations to liquidate contract authorizations)	(352,000,000)	(262,800,000)
Total appropriations, including appropriations to liquidate contract authorizations	10,224,611,400	8,923,076,000
Department of State	1,151,847,000	1,262,897,000
Department of Justice	2,300,619,000	2,471,002,000
Department of Commerce	1,936,454,000	2,422,607,000
The Judiciary	444,318,000	495,552,000
Related Agencies:		
Arms Control and Disarmament Agency	13,600,000	16,395,000
Board for International Broadcasting	65,900,000	85,180,000
Commission on Civil Rights	10,480,000	10,752,000
Commission on Security and Cooperation in Europe	347,000	521,000
Equal Employment Opportunity Commission	77,050,000	110,000,000

AUTHORITY FOR FISCAL YEAR 1978 AND BUDGET ESTIMATES BILL FOR FISCAL YEAR 1979—Continued

in dollars]

House allowance	Committee recommendation	Increase (+) or decrease (−) compared with—		
		1978 Appropriation	Budget estimate	House allowance
4,000,000	4,000,000	---	---	---
35,000,000	43,000,000	-4,000,000	+16,000,000	+8,000,000
1,090,500,000	850,280,000	-2,242,720,000	+23,180,000	-240,220,000
---	1,800,000	+1,800,000	---	+1,800,000
1,572,752,000	1,980,468,000	-2,060,905,400	-27,750,000	+407,716,000
4,681,543,600	8,635,438,000	-1,237,173,400	-24,838,000	+3,953,894,400
-92,825,700	---	---	---	+92,825,700
4,588,717,900	8,635,438,000	-1,237,173,400	-24,838,000	+4,046,720,100
4,588,717,900	8,635,438,000	-1,237,173,400	-24,838,000	+4,046,720,100
---	(5,081,000)	(-1,247,000)	---	(+5,081,000)
(10,615,000)	(5,615,000)	(+5,615,000)	(+5,615,000)	(-5,000,000)
---	(250,000,000)	(-102,000,000)	(-12,800,000)	(+250,000,000)
4,588,717,900	8,885,438,000	-1,339,173,400	-37,638,000	+4,296,720,100
---	1,262,291,000	+110,444,000	-606,000	+1,262,291,000
834,441,000	2,484,579,000	+193,060,000	+13,577,000	+1,650,138,000
1,793,034,000	2,417,425,000	+492,971,000	-5,182,000	+624,391,000
481,316,600	490,675,000	+46,357,000	-4,877,000	+9,358,400
---	16,395,000	+2,795,000	---	+16,395,000
---	85,000,000	+19,100,000	-180,000	+85,000,000
---	10,752,000	+272,000	---	+10,752,000
350,000	521,000	+174,000	---	+171,000
110,000,000	110,000,000	+32,950,000	---	---

COMPARATIVE STATEMENT OF NEW BUDGET (OBLIGATIONA
AND AMOUNTS RECOMMENDED IN T

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Item	1978 Appropriation	Budget estimate
Federal Communications Commission	61,400,000	68,196,00
Federal Maritime Commission	9,424,000	10,530,00
Federal Trade Commission	59,500,000	66,485,00
Foreign Claims Settlement Commission	920,000	1,015,00
International Communication Agency	364,572,400	413,327,00
International Trade Commission	11,500,000	13,113,00
Japan - United States Friendship Commission	1,000,000	1,500,00
Legal Services Corporation	205,000,000	304,000,00
Marine Mammal Commission	900,000	702,00
National Commission on the International Year of the Child	---	1,360,00
Office of the Special Representative for Trade Negotiations	2,680,000	2,665,00
Presidential Commission on Hunger	---	1,500,00
Renegotiation Board	6,000,000	7,277,00
Securities and Exchange Commission	58,100,000	64,800,00
Small Business Administration	3,093,000,000	827,100,00
U.S. Metric Board	---	1,800,00
Subtotal	9,872,611,400	8,660,276,00
Sec. 605 general reduction, 2 percent (estimate)	---	---
Grand total	9,872,611,400	8,660,276,00

AUTHORITY FOR FISCAL YEAR 1978 AND BUDGET ESTIMATES BILL FOR FISCAL YEAR 1979—Continued

in dollars]

House allowance	Committee recommendation	Increase (+) or decrease (−) compared with—		
		1978 Appropriation	Budget estimate	House allowance
68,535,000	70,446,000	+9,046,000	+2,250,000	+1,911,000
10,500,000	10,550,000	+1,126,000	+20,000	+50,000
---	65,000,000	+6,400,000	-595,000	+65,000,000
---	---	-920,000	-1,015,000	---
---	413,300,000	+68,736,600	-18,000	+413,300,000
---	13,100,000	+1,600,000	-13,000	+13,100,000
1,500,000	1,500,000	+500,000	---	---
255,000,000	255,000,000	+50,000,000	-40,000,000	-30,000,000
702,000	840,000	-60,000	+138,000	+138,000
---	---	---	-1,360,000	---
2,665,000	2,665,000	-15,000	---	---
---	1,500,000	+1,500,000	---	+1,500,000
3,000,000	6,260,000	+260,000	-1,017,000	+3,260,000
---	64,650,000	+6,550,000	-150,000	+64,650,000
1,090,500,000	850,280,000	-2,242,720,000	+23,180,000	-240,220,000
---	1,800,000	+1,800,000	---	+1,800,000
4,681,543,600	8,635,438,000	-1,237,173,400	-24,838,000	+3,953,894,400
-92,825,700	---	---	---	+92,825,700
4,588,717,900	8,635,438,000	-1,237,173,400	-24,838,000	+4,046,720,100

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95TH CONGRESS
2d Session

SENATE

Calendar No. 966

REPORT
No. 95-1044

AUTHORIZING THE REPRINTING OF BOOK II OF THE SENATE REPORT ENTITLED "INTELLIGENCE ACTIVITIES AND THE RIGHTS OF AMERICANS" (S. REPT. 94-755)

JULY 28 (legislative day, MAY 17), 1978.—Ordered to be printed

Mr. PELL, from the Committee on Rules and Administration, submitted the following

REPORT

[To accompany S. Con. Res. 96]

The Committee on Rules and Administration, to which was referred the concurrent resolution (S. Con. Res. 96) authorizing the reprinting of book II of the Senate report entitled "Intelligence Activities and the Rights of Americans" (S. Rept. 94-755), having considered the same, reports favorably thereon without amendment and recommends that the concurrent resolution be agreed to.

Senate Concurrent Resolution 96 would authorize the reprinting for the use of the Senate Select Committee on Intelligence of 600 copies of book II of the final report of the Senate Select Committee To Study Governmental Operations With Respect to Intelligence Activities, 94th Congress, 2d session, entitled "Intelligence Activities and the Rights of Americans" (S. Rept. 94-755).

The printing-cost estimate, supplied by the Public Printer, is as follows:

Printing-cost estimate

Back to press, 600 copies	$3,323.03

A joint letter is support of Senate Concurrent Resolution 96 addressed to Senator Claiborne Pell, chairman of the Senate Committee on Rules and Administration, by Senator Birch Bayh and Senator Barry Goldwater, chairman and vice chairman, respectively, of the Senate Select Committee on Intelligence, is as follows:

U.S. SENATE,
SELECT COMMITTEE ON INTELLIGENCE,
Washington, D.C., July 21, 1978.

HON. CLAIBORNE PELL,
Chairman, Committee on Rules and Administration, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: We are writing to you in support of the attached Senate Concurrent Resolution 96, to authorize the printing of 600 copies of Senate Report 94–755, book II, of the final report of the Select Committee To Study Governmental Operations With Respect to Intelligence Activities.

The Select Committee on Intelligence received some copies of this volume from its predecessor committee and has been using them as source material for the past 2 years. The supply is now exhausted. Future members of this committee and its staff will have the same need for copies of this report for their own use and for the use of other Members of Congress.

The cost of reprinting 600 copies of this report has been estimated by the Government Printing Office to be $3,323.03. Approval of this expenditure for reprinting of this useful publication would be appreciated.

With kind regards,
Sincerely,

BIRCH BAYH,
Chairman.
BARRY GOLDWATER,
Vice Chairman.

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Calendar No. 967

95TH CONGRESS, 2d Session | SENATE | REPORT No. 95-1045

AUTHORIZING THE REPRINTING OF THE COMMITTEE PRINT ENTITLED "PRELIMINARY GUIDE TO EXPORT OPPORTUNITIES TO JAPAN"

JULY 28 (legislative day, MAY 17), 1978.—Ordered to be printed

Mr. PELL, from the Committee on Rules and Administration, submitted the following

REPORT

[To accompany S. Con. Res. 97]

The Committee on Rules and Administration, to which was referred the concurrent resolution (S. Con. Res. 97) authorizing the printing of additional copies of the committee print entitled "Preliminary Guide to Export Opportunities to Japan", having considered the same, reports favorably thereon without amendment and recommends that the concurrent resolution be agreed to.

Senate Concurrent Resolution 97 would authorize the reprinting for the use of the Senate Committee on Banking, Housing, and Urban Affairs of 2,000 copies of its committee print of the 95th Congress, 2d session, entitled "Preliminary Guide to Export Opportunities to Japan".

The printing-cost estimate, supplied by the Public Printer, is as follows:

Printing-cost estimate

Back to press, first 1,000 copies	$2,398.36
1,000 additional copies, at $560.72 per thousand	560.72
Total estimated cost, S. Con. Res. 97	2,959.08

A joint letter in support of Senate Concurrent Resolution 97 addressed to Senator Claiborne Pell, chairman of the Senate Committee on Rules and Administration, by Senator William Proxmire and Senator Edward W. Brooke, chairman and ranking minority member, respectively, of the Senate Committee on Banking, Housing, and Urban Affairs, is as follows:

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
Washington, D.C., July 17, 1978.

Hon. CLAIBORNE PELL,
Chairman, Senate Committee on Rules,
U.S. Senate, Washington, D.C.

DEAR SENATOR PELL: Enclosed is a copy of the Senate concurrent resolution we have introduced requesting the printing of an additional 2,000 copies of a document entitled "Preliminary Guide to Export Opportunities to Japan". The document contains information on products which the Japanese are reported to be interested in buying from the United States and other information of general interest to the public.

As you know, our bilateral trade deficit with Japan continues to mount as does our overall deficit. The printing and distribution of this document is one small step Congress can take toward encouraging U.S. exports to Japan which will help reduce the trade gap.

The initial supply of copies of this document was quickly exhausted and the committee continues to receive requests at a steady rate. The committee is informed that the document cannot be made available on a timely basis in sufficient quantities from other sources.

We hope that it will be possible for the Rules Committee to give early consideration to the resolution, given the current nature of the information contained in the document and the desirability of prompt dissemination.

All best wishes,
Sincerely,

WILLIAM PROXMIRE,
Chairman.
EDWARD W. BROOKE,
Ranking Minority Member.

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Calendar No. 968

95TH CONGRESS
2d Session

SENATE

REPORT
No. 95-1046

AUTHORIZING SUPPLEMENTAL EXPENDITURES BY THE COMMITTEE ON FINANCE FOR INQUIRIES AND INVESTIGATIONS

JULY 28 (legislative day, MAY 17), 1978.—Ordered to be printed

Mr. PELL, from the Committee on Rules and Administration, submitted the following

REPORT

[To accompany S. Res. 487]

The Committee on Rules and Administration, to which was referred the resolution (S. Res. 487) authorizing supplemental expenditures by the Committee on Finance for inquiries and investigations, having considered the same, reports favorably thereon without amendment and recommends that the resolution be agreed to.

Senate Resolution 487 would increase by $300,000—from $609,600 to $909,600—the annual expenditure authorization of the Committee on Finance for the current investigative year (S. Res. 392 agreed to Mar. 6, 1978).

The Committee on Finance has requested this additional funding—not to exceed $300,000—in order to procure the services of consultants to conduct two major studies designed to: (1) Improve revenue estimating capacity, and (2) project the potential benefits and costs of the current multilateral trade negotiations.

Under (1) above, the total contract is estimated to cost $244,000, although the first phase for the current investigative year would cost $100,000. The second phase, to be completed during the 1979 investigative year (Mar. 1, 1979-Feb. 29, 1980), would cost approximately $144,000. The committee believes it must have data to permit a review of a widely utilized revenue-estimating model, the Chase Econometrics Associates model, and thereby take into account the impact of a tax change on taxpayers' economic behavior, something not taken into account on most economic models. The revised model would be designed to provide improved revenue estimates to serve as a better basis for the committee's tax policy decision in the future.

29-008—78—No. 1046

Under (2) above, the importance of this proposed $200,000 study is linked to the Multilateral Trade Negotiations in which the United States will be participating during the balance of 1978, preceding the President's anticipated submission of implementing legislation to Congress early in 1979. Since no executive agency has undertaken an assessment of the potential costs and benefits to the United States of the trade agreement, the committee believes it should utilize consultants from universities and other institutions to conduct analyses of the impact of the trade agreement. Studies totaling $200,000 are proposed in at least three areas: (1) An overall evaluation of the effects of the tariff reductions on U.S. employment, exports, and imports, (2) the likely impact of the agreements on U.S. agriculture, for example, access to foreign markets and the effects of foreign subsidies, and (3) the likely impact of the agreements on U.S. labor (those industries where employment might both increase and decrease, and the impact on U.S. real wages and distribution of skills).

In addition to the studies outlined above, several consultants would be retained on a per diem basis to provide the committee with ongoing consultation services.

Additional information concerning the purposes and need for Senate Resolution 487 is contained in a joint letter, with attachments, addressed to Senator Clairborne Pell, chairman of the Committee on Rules and Administration, by Senator Russell B. Long and Senator Carl T. Curtis, chairman and ranking minority member, respectively, of the Committee on Finance, which letter is as follows.

U.S. SENATE,
COMMITTEE ON FINANCE,
Washington, D.C. June 22, 1978.

Hon. CLAIBORNE PELL,
Chairman, Committee on Rules and Administration, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: The Finance Committee met this morning and ordered reported a resolution authorizing supplemental expenditures by the Committee on Finance. The resolution would provide an additional $300,000 for Finance Committee consultant services for the remainder of the current fiscal year.

The amount sought for additional consultant services represents two major items:

1. *Improvement of revenue estimating capacity ($100,000).*—A major consideration in Finance Committee and Senate deliberations on revenue measures is the estimated revenue effect resulting from a tax policy change. The revenue estimates are usually based on economic models. However, most models fail to take sufficiently into account the impact of a tax change on taxpayers' economic behavior. Thus, for example, the revenue impact of a capital gains tax increase or an investment tax credit increase are estimated without sufficiently taking into account the way these tax changes will affect investment. The committee proposes to revise a widely utilized model (the Chase Econometrics Associates model) to correct, to the extent possible, this omission. The revised model would provide improved revenue esti-

mates and serve as a better basis for tax policy decisions in the future. The total contract is estimated to cost $244,000; the first phase, during the current fiscal year, will cost $100,000.

2. *Potential benefits and costs of the multilateral trade negotiations ($200,000).*—During the remainder of 1978, the United States will be completing the Multilateral Trade Negotiations. Early in 1979 the President will submit implementing legislation to Congress. To date, no executive agency has undertaken an assessment of the potential costs and benefits to the United States of the trade agreement. To obtain as broad a perspective as possible to assist us in evaluating the trade agreement, we need to utilize consultants from universities and other institutions to conduct analyses of the impact of the negotiations. It would be desirable to have studies in at least these three areas: (1) an overall evaluation of the effects of the tariff reductions on U.S. employment, exports, and imports; (2) the likely impact of the agreements on U.S. agriculture (for example, access to foreign markets and the effects of foreign subsidies); and (3) the likely impact of the agreements on U.S. labor (those industries where employment might increase and those where employment might decrease; the impact on U.S. real wages and distribution of skills). In addition to the studies outlined above, several consultants would be retained on a per diem basis to provide the committee with ongoing consultation services.

Attached are more detailed descriptions of what the committee hopes to accomplish with the supplementary funds for consultants. We urge your support for the supplementary funding resolution.

Sincerely,

RUSSELL B. LONG,
Chairman.

CARL T. CURTIS,
Ranking Minority Member.

Enclosure.

ATTACHMENT A

PROPOSAL TO STUDY TAX EFFECTS IN ECONOMETRIC MODELS

Summary

The Committee on Finance as part of its deliberations on revenue measures regularly receives estimates of the potential revenue effect due to a tax policy change. Economic models have been frequently used to make revenue estimates. The Committee believes that it would be timely to have the structure of these models studied particularly with respect to taxes. The Committee also believes that it would be useful to revise a wide utilized model to correct for possible omitted tax linkages in the model. The revised model would serve to demonstrate the significance of these omissions and how they have influenced the revenue estimates presented to the committee.

The commitee proposes to contract with Chase Econometrics Associates, Incorporate (CEAI) of Bala Cynwyd, Pennsylvania, to perform the study. CEAI has had considerable experience in constructing and using economic models. The major tasks of the study will include:

First, CEAI will review all relevant economic literature to assess the current state of knowledge on tax effects.

Second, CEAI will provide the treatment of taxes in the most widely used economic models.

Third, CEAI will revise their econometric model incorporating expanded tax linkages.

Finally, CEAI will use the revised model to study the significance of new linkages as they affect aggregate economic indicators such as output, employment, and prices.

The study will require a total of 70 man-months of labor time to complete. It will be divided into two parts of nine months duration each. The total study will cost $244,000. The cost for the first part (in the current fiscal year) will be $100,000.

The major benefits to the committee from this work will be:

A better understanding of the limitations and strengths of existing models with respect to their usefulness in estimating revenue effects.

An assessment of the omissions in current models of tax linkages and the significance of these omissions.

A greater public awareness of the shortcomings of existing models used for tax policy analysis.

Estimates of the potential impact on revenue projections of including greater detail on the tax structure in an econometric model.

Introduction

Because econometrics models of the U.S. economy are being frequently used to examine revenue proposals, the Committee on Finance believes that an assessment of the credibility of these models would be timely. The committee often receives testimony based on the use of an econometric model, yet it has little evidence supporting the general validity of these models. Further, there is an indication that most models may fail to incorporate potentially important linkages between the tax sector and the general economy. These oversights may bias the revenue projections made with the models.

The committee proposes that a study be made of the treatment of tax effects in econometric models. The study will examine the current treatment of taxes in the most widely utilized econometric models and also examine the significance of any linkages which the models may fail to consider. Before detailing the proposed tasks to be performed in the study, a brief overview is provided on econometric models—what they do, and how the Federal taxes are included in their structure.

The basic elements of an econometric model

There are approximately a dozen statistical models of the U.S. economy which attempt to approximate the basic economic structure. While these models may differ in specific details, the overall design is constrained by four considerations.

First, economic theory dictates certain structural forms be used.

Second, institutional factors will necessitate that certain relationships must hold.

Third, basic economic accounting identities must be preserved.

Fourth, economic data must be available with sufficient frequency and reliability to support the relations used in the model.

Within these four broad considerations there is considerable latitude about how to specify a particular relationship. Judgmental decisions are reflecting the personal bias of the model builder. Thus, while at a broad level most models have strong similarities, they can have substantial differences in their details. The differences in details accounts for the varying responses models give to changes in a common policy variable.

The basic building-block of a statistical model is an equation describing how one economic variable—consumer spending, business profits, the unemployment rate, or any one of hundreds of others—responds to current and past movements in other economic variables. For example, one equation might relate consumer spending this quarter to household disposable income and the level of the Consumer Price Index. An econometric model might contain anywhere from ten to several hundred of these explanatory equations based on historical data.

Binding the statistical relations together is a set of accounting identities. For example, a model may have statistical relations for U.S. exports and imports and a basic accounting relation which states that the trade balance is the difference.

Institutional considerations are accounted for in several ways. One way is in designing the statistical relationships. For example, the Consumer Price Index (CPI) could be determined by a weighted set of prices where the weights are taken from Bureau of Labor Statistics CPI calculations. Another way of accounting for institutional relations is in declaring what is "endogenous" to the model and what is "exogenous". Endogenous variables have explanatory equations determining their values in the model. Exogenous variables are variables for which the model user must supply values in operating the model. Endogenous variables typically include consumption, employment, profits, and investment. Exogenous variables include discretionary Federal outlays such as defense spending or public employment grants, demographic trends, tax rates, and key monetary policy instruments. These Government policy variables are usually projected by users on the basis of administration and congressional budgetary plans and Federal Reserve monetary targets.

To obtain a forecast from a statistical model, it is necessary to select values for all of the exogenous variables for as far ahead as the prediction is to go. The model's equations are then solved to obtain values for all of the endogenous variables for each of the forecast periods. Model users typically adjust the initial model predictions, modifying judgmentally those projections which seem unreasonable, and resolving the entire model with the modified values. Typically, there will be one projection which the model user will declare as a baseline forecast, that is, a basic extrapolation of how the economy will perform under an initial set of policy assumptions. The impact of policy changes are measured by resolving the model with the revised policy assumptions and measuring the differences between the baseline and alternative solutions.

Demand side versus supply side considerations

At its simplest, one might view aggregate economic activity a being determined by the interaction of aggregate demand and ag gregate supply. If one was just interested in determinir ; aggregat activity, such a simple model would be adequate. But, if one is in terested in using the model for more than just predicting GNP, larger scale, more detailed model is necessary.

Traditionally, most of the disaggregation and structural detail ha been added to the demand side of models. There are several reason for this. Economic theory was better developed and more widely ac cepted for the determinants of final demand. Equally import was th availability of data. Total final demand is typically disaggregate into four main categories: consumption, investment, exports and im ports, and Government purchases. These broad categories can b further subdivided. For example, total consumption can be broke down into durables, nondurables, and services.

The disaggregation of supply is not so well defined. Although i would be possible to estimate supply functions that were directl paired with the components of final demand, this approach is nc commonly used. The lack of data to support such a pairing of suppl sectors with demand categories is the major reason. Supply considera tions are usually manifested through price adjustments rather tha explicitly treated in the model. This indirect treatment of suppl causes difficulties when one wants to measure the effects of a tax mea ure which has an impact on supply.

Tax treatment and supply consideration

Since almost all econometric models fail to explicitly treat suppl side considerations fully, they are incapable of accounting for all th economic effects of tax policy changes. These models do consider th beneficial impacts of decreases in personal and corporate income taxe because demand side components affected by these taxes are include in the models. But, the models neglect potential improvements in pro ductivity and individual incentives which would also result fro changing these taxes. Hence, the estimated revenue effects (as we as other economic effects such as employment and output) are likel to be understated.

The deficiencies would not be considered serious if the magnitud of the errors were known in advance. However, this important are of economics is quite difficult to model and has not been studied ad quately. The direction of the bias in existing models resulting fro the omission of supply considerations is know: existing models wi tend to understate the negative impacts of a tax increase and fail t fully capture the positive impacts of a tax decrease. What is n known is the magnitude of the bias. Some have argued that as taxe increase, the potential importance of these omissions might even i crease exponentially.

Necessity for a study

Econometric models have become so commonly used in tax polic analysis and their results so widely reviewed by decisonmakers tha the Finance Committee believes it is imperative that the treatment

taxes in these models be thoroughly reviewed and documented. The estimated revenue effects of a policy change provided by these models are utilized by the committee in its deliberations on tax policy changes. The committee believes that an assessment of the magnitude of the bias in the revenue estimates is particularly important. Estimates of the magnitude of the bias would enable the committee to have a greater degree of confidence in the revenue estimates provided by models.

The committee also believes it would be useful to have a better understanding of how tax effects are manipulated in the model. To what extent are the tax effects due to changes in "exogenous" factors, that is values selected by the model user, and to what extent are the tax effects due to "endogenous" factors, that is values which are determined internally in the model.

To the extent that models help the committee achieve a better understanding of the issues and choices before it, they serve a valuable function. But, the committee believes that it must have some assurances that important aspects of the problems are not being overlooked. To that end, the proposed study will illuminate the strengths and deficiencies of existing models, and possibly provide some remedies.

Description of the proposed study

The committee recommends that Chase Econometrics Associates, Inc. (CEAI), Bala Cynwyd, Pa., be engaged to perform the study of tax effects in econometric models. CEAI has a great deal of experience using econometric models and, in particular, has studied the relation of taxes to overall economic activity and employment.

The task of quantifying the aggregate supply linkages in the economy is not a simple undertaking. Aggregate supply linkages differ from aggregate demand linkages both in their greater complexity and in the likelihood of having a slower initial impact which then grows continuously during a period of several years. In addition, most of the data collected by the Government are designed to describe aggregate demand linkages and great amounts of data checking must be undertaken before the analysis can commence. Finally, the paucity of prior research requires extraordinary care in the investigative process.

The first phase of the investigation will be to obtain existing survey data on family income, assets, occupation, age, state of life cycle, et cetera. The primary source for data of this type is the "Survey of Consumer Finances" prepared by the University of Michigan's Survey Research Center. Other cross-sectional data, such as historical IRS tax data will also be obtained for comparative purposes and to add additional information. These data will be internally checked to insure their quality. From these data the impact of personal income taxes upon family decisions by family types will be calculated with a major effort being made to explore the time buildup of the responses to changes in tax rates.

The second phase of the analysis will be a time series analysis in which factors such as labor force participation by age/sex class, investment, the level of technology, the cost of debt and equity capital, the flows of financial assets and the inflation sections of the CEAI econometric model will be re-estimated to assess the impact of taxes upon changes in these key economic indicators.

The third phase of the study will be to reconcile the two previo phases so that the linkages which are found to be important can b programed into the CEAI econometric model. Once this is accom plished, various types of tax changes can be entered into the CEA model and the impacts upon the key economic indicators calculate

Level of effort

The Chase Econometrics study will require 18 months to complet Approximately 70 man-months of effort will be required. Appendix defines the major tasks of the study.

Chase Econometrics is to perform the first phase between July 197 and January 1979. Total cost for the first phase is $100,000. An interi report will be prepared for submission after completion of the fir phase. The remainder of the study will start February 1979, runnin for 11 months. The cost of the second phase is estimated to be $144,00 A fixed price award will be made to Chase Econometrics.

Upon completion of the project, a final report will be submitted t the committee for its consideration. In addition, the CEAI econom model, inclusive of the supply side revisions, will be available fo general use.

Appendix 1

Description of tasks.—The Chase Econometrics study will consi of 8 tasks (See table I). These tasks are to be grouped into two part The initial part consists of tasks 1 and 2 and parts of 3 and 4. Fundin for this portion of the study will be required during the current con gressional fiscal year. The balance of the required funding will b requested in the subsequent fiscal period. The exact nature of the wor to be performed in the second part is to some degree contingent upo the results of the first part.

Table I

PROPOSED TASKS FOR THE CHASE ECONOMETRICS STUDY

1. Review relevant economic literature.
2. Develop specifications for model revisions (submission of Interi report).
3. Estimation of time-series relationships.
4. Estimation of cross-section relationships.
5. Reconciliation of time-series with cross-section estimates.
6. Programing of revised model.
7. Simulation of revised model.
8. Submission of final report.

Review of the current economic literature.—A comprehensive revie of the economic literature as it pertains to the treatment of taxes i econometric models is a key element of study. The findings from thi work will influence the specifications CEAI utilizes in empirically estimating the parameters of its revised model. Equally important i the useful background this work will provide to the problem of assess ing the proper tax-general economy linkages.

Chase Econometrics will be expected to review all relevant article on tax effects and provide a detailed review of those articles it con siders significant. If possible, it would be expected that CEAI will als

discuss current modeling practice. That is, how the different commercial models integrate taxes into their structure. Proprietary restrictions may limit their ability to report on this topic.

Revised model specification.—Based upon their findings from a review of the current economic literature, Chase Econometrics will develop a detailed set of equation specifications for their revised model.

Cross-section and time series; estimation of revised structural parameters.—While the majority of the estimation work will be performed in the second part of the study, the preliminary processing of the data as well as the preliminary estimation of the cross-section relations will be performed during the initial phase of the study. The results of this work will influence the overall design of the model revisions.

In developing its cross-section estimates, Chase proposes to utilize the "Survey of Consumer Finances" prepared by the Survey Research Center at the University of Michigan. The survey annually reports for 2,000 family units, information on the amount and type of income and assets stratified by income group. Since the data exist for a multiyear period, a panel data series can be developed. Potentially, this data could provide insight into the sensitivity of the income distribution and aset holdings to tax policy.

Reconciliation.—A very critical step in the development of the revised specifications is the reconciliation of the cross-sectional estimates with the time series. The cross-sectional estimates will reflect the microlevel tructure. To incorporate these parameters into the time series relation will require a constrained estimation procedure. The resultant equations would have the microparameters embedded in the dynamic form of the time series relation.

Programing.—The resulting set of equations must be formulated into an econometric model in order to obtain the total effect of changes in various tax laws. The new equations will be fitted into a algorithm similar to the one currently used for the CEAI econometric model.

Simulations.—The revised version of the Chase Econometrics model will be utilized to study a variety of tax policy changes. By systematically examining the tax-egenarl economic interaction, the model will examine the sensitivity of the results to tax policy changes.

Final Report.—The final report to the committee will include the results of the literature search, equation estimation, and model simulation. Chase Econometrics will fully document and make available to the committee all results related to ites empirical work.

Attachment B

Potential benefits and costs of the multilateral trade negotiations

Background

The Trade Act of 1974 provided the authorities necessary for the United States participation in the Multilateral Trade Negotiations (MTN) currently underway in Geneva. The negotiations are being held under the auspices of the General Agreement on Tariffs and Trade (GATT). The GATT, which took effect in 1948, is a multi-

lateral trade agreement of reciprocal rights and obligations. It p
vides a set of rules to govern the conduct of international trade, p
cedures to settle trade disputes, and a framework for negotiations
reduce obstacles to international trade. The current round of negot
tions in Geneva represent the seventh set of negotiations. The previ
set of negotiations, the Kennedy round, were completed in 1967.

The current round of negotiations are scheduled to be comple
later this year. Early in 1979, the President will submit an impleme
ing bill (or bills) to Congress. The implementing legislation will d
with agreements on nontariff measures. (The Trade Act of 1974 g
the President the authority to negotiate increases or decreases in ta
rates by proclamation without congressional approval.)

Once the President submits an implementing bill, it cannot
amended. Therefore, Congress must take an active interest in the ne
tiations before final agreements are reached in the MTN.

The importance of congressional involvement can be demonstrat
by the experience of the Kennedy round. After completion of the K
nedy round, Congress refused to implement the nontariff agreeme
negotiated by the executive branch.

Members of the Committees on Finance and House Ways and Mea
have been designated under the Trade Act to be official advisors to t
MTN delegation. These advisors, and designated committee staff me
bers, have been monitoring the progress of the MTN. The Trade A
requires the Administration to consult with the Congress on the su
stance of agreements being negotiated, changes in domestic law
regulations necessary to implement trade agreements, and packagi
of implementing legislation for consideration by Congress.

The Geneva negotiations cover a broad spectrum of topics. Tari
are a major component but, more than in any prior negotiating roun
the nontariff matters are significant. For example, agriculture is pote
tially affected by agreements on grains, meat, and dairy products whi
require consultation and possibly additional U.S. actions. Other no
tariff matters being negotiated include Government procurement, cu
toms valuation, subsidies and countervailing duties, product standard
and safeguards.

Services to be contracted for by the committee

In preparation for Congressional consideration of these comple
and important trade agreements, the committee believes it is necessar
to have background studies prepared which would assess the costs an
benefits which would accrue to the United States from the trade agre
ments. It is important to note that to date, no executive agency ha
undertaken any such assessment.

The committee staff has contacted the International Trade Commi
sion, the Library of Congress, and the Congressional Budget Offic
about performing analyses of the MTN. But to obtain as broad a pe
spective as possible on the MTN, the committee feels it should utiliz
outside consultants from universities and other institutions.

The committee has identified several aspects of the MTN on whic
it would like to see outside assessments made. These areas are: A
overall evaluation of the tariff reductions; the likely impact of th
agreements on U.S. agriculture; the likely impact of the agreement
on U.S. labor. These studies will be discussed in greater detail below

In addition to these major studies, the committee believes it would be useful to contract with several economic experts on international trade on a per diem basis. These experts would be available to assist the committee in the evaluation of any studies independently submitted to the committee.

Discussion of contract studies

Tariffs.—As with earlier trade negotiations, the tariff-cutting exercise will be a highly visible part of the negotiations. Since there are more than 5,000 individual tariff-line items in the U.S. tariff schedule, understanding the net impact on the U.S. economy is a difficult task. Further complicating the problem is the fact that, in arriving at an estimate, one must also consider the tariff schedules of the major U.S. trading partners.

One summary measure which is frequently presented to represent the aggregate result from a tariff reduction across a broad portion of the U.S. tariff schedule is the "average depth of tariff cut." This capitalizes the tariff reductions in a single value. One frequently hears reference to an "average depth of cut of 35 percent" in the Kennedy round. Unfortunately, this approach has serious shortcomings. First, it is difficult to weigh tariff reductions in a wholly satisfactory way. For example, if a duty was sufficiently high to keep out imports entirely prior to the tariff cuts, what weight should be utilized in generating the depth-of-cut value? Besides the difficulty of producing the depth-of-cut value, the value itself indicates nothing about distribution of tariffs. The committee believes it is important to avoid relying on just the depth-of-cut measurement to measure the success of the tariff negotiations.

The study which the committee will contract for will examine the tariff negotiations from several perspectives. These include total employment and employment by industry, changes in exports and imports, and output. By providing evaluations of these economic criteria at a detailed industrial level, the Congress will be able to better understand the economic effects. An equally important consideration will be how politically sensitive sectors of the economy are effected.

Agriculture.—The agricultural negotiations are an especially important area of the MTN. While tariff reductions will have some impact on U.S. agriculture, the more significant impacts are likely to come from the nontariff side of the negotiations. The European Community's (EC's) variable levy and Japanese quotas have been significant barriers to increased U.S. agricultural exports. Also the use of agricultural subsidies by the EC and others has offset the comparative advantage of the U.S. in major traded commodities in third markets.

The agricultural study will examine the implications of U.S. negotiations on the nontariff barriers for expanded U.S. access. In part, this work can be quantified. But it is likely that a great deal of this report will be based on qualitative assessments of the importance of various changes.

Labor.—U.S. participation in the MTN can hardly be considered beneficial if the end result of participation would be significantly increased domestic unemployment. A careful evaluation of the overall impact of the MTN on U.S. labor is critical in arriving at a decision on the benefits of the agreements.

The labor study will focus on employment effects, but it will also examine the real wage and skill distribution implications. Are U.S. workers going to be able to continue to increase their real wages or are the most productive, labor intensive industries going to contract if the MTN agreements were ratified? Further, it will be important to evaluate the possible shifts in occupations. Are the industries which are identified as potential gainers from expanded trade those which require higher skilled labor? If so, what will happen to the individuals who are employed in the less skilled occupations?

Estimated cost of consultations

The committee supplemental request includes $200,000 in connection with the MTN studies and other consultant services. Approximately 5 percent of this amount will be applied to the hiring of consultants on a per diem basis. The three studies will require the balance.

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Calendar No. 969

95TH CONGRESS 2d Session } SENATE { REPORT No. 95-1047

EXTENDING THE SELECT COMMITTEE ON INDIAN AFFAIRS THROUGH THE 95TH CONGRESS

JULY 28 (legislative day, MAY 17), 1978.—Ordered to be printed

Mr. PELL, from the Committee on Rules and Administration, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany S. Res. 405]

The Committee on Rules and Administration, to which was referred the resolution (S. Res. 405) to make the Select Committee on Indian Affairs a permanent committee of the Senate, having considered the same, reports favorably thereon with an amendment to the text and an amendment to the title, and recommends that the resolution as amended be agreed to.

PURPOSE

Senate Resolution 405 as referred would amend section 105 of Senate Resolution 4, 95th Congress, agreed to February 4, 1977, by making the Select Committee on Indian Affairs a permanent select committee of the Senate.

GENERAL STATEMENT

The status of American Indians, and the policies of the Federal Government toward them, has been a recurrent and troublesome problem through most of the history of the United States. It has been only in recent years, however, that broad public concern has developed over the Federal Government's American Indian policies and the consequences of those policies for American Indians, their cultures, and their economic, physical, and social conditions.

29-008—78—No. 1047

As a result of growing public concern over these issues, the Congress in 1974 established the American Indian Policy Review Commission (AIPRC), with a mandate to undertake a comprehensive study of the conduct of Indian affairs. It was the first such comprehensive study conducted in 50 years.

The AIPRC concluded its study and submitted its report to the Congress on May 17, 1977. Included in the report were 206 recommendations for improvement of Federal Government policies and practices in its relations with American Indians.

On February 4 of that same year, the Senate adopted, by a vote of 89 to 1, Senate Resolution 4, which reformed and reorganized the committee structure of the Senate. While eliminating several Senate committees to streamline the functioning of the Senate, Senate Resolution 4 established a temporary Select Committee on Indian Affairs, specifically to consider and act on the recommendations of the American Indian Policy Review Commission. The life of the select committee was limited by Senate Resolution 4 to the 95th Congress in the expectation that this would allow sufficient time for it to complete its work on the recommendations of the AIPRC and other related Indian affairs matters. Because the life of the select committee was limited to 2 years, Senate Resolution 4 also exempted it from the committee membership limitations established by Senate Resolution 4, because it would be unreasonable to expect Senators to yield membership and seniority on other permanent committees to serve on a temporary select committee.

The rationale of the Committee on Rules and Administration in recommending establishment of the Select Committee on Indian Affairs was clear. There was an evident need for a committee whose members could focus full attention on Indian affairs legislation with the assistance of an adequate staff with expertise in that field.

The Committee on Rules and Administration believes that the performnce of the Select Committee on Indian Affairs during this Congress has justified its decision and that of the Senate, in establishing the select committee. During this 95th Congress, the Select Committee on Indian Affairs has considered more than 100 recommendations of the AIPRC and has reported to the Senate more than 30 pieces of legislation.

Although the wisdom of the Senate in establishing the Select Committee on Indian Affairs has been proven, it is also apparent that the date set for termination of the select committee has proven unrealistic. The select committee has an imposing agenda which can not realistically be considered during the remaining months of this Congress. The issues remaining before the select committee are significant and complex. They include a recodification of title 25 of the United States Code, the economic development of Indian reservations, energy resources of tribes, settlement of conflicts over Indian rights to water, natural resources, hunting and fishing, and settlements of land claims in many States.

The committee concluded that extension of the select committee for one additional Congress is highly desirable to permit expert and expe-

ditious consideration of these issues by the select committee and by the Senate.

The Committee on Rules and Administration is aware that the original plan called for absorption of Indian affairs jurisdiction by the Committee on Human Resources at the conclusion of this Congress. It has been argued that this absorption should be permitted to go forward and that a subcommittee of the Human Resources Committee could carry on the work now being done by the Select Committee on Indian Affairs. The committee is convinced, however, that it would be unwise to terminate a proven, working structure for the consideration of American Indian affairs, while the basic work contemplated for the select committee is in mid-stream. The committee further believes that extending the select committee for 2 additional years is wholly consistent with the Senate's objectives on Indian affairs and does no more violence to committee reform than did the establishment of the select committee by Senate Resolution 4, the vehicle for committee reform.

The Committee on Rules and Administration also considered the question of whether members of the Select Committee on Indian Affairs should remain exempt from the committee assignment limitations applicable to permanent committees. The committee concluded that because the select committee under Senate Resolution 405, as amended, would remain as a temporary select committee, the exemption should be continued. To remove the exemption, while extending the life of the select committee, would require members of the select committee to relinquish membership and seniority on other committees to continue their service on the temporary select committee. The only reasonable course, if the select committee is extended, is to extend also the membership limitation exemption.

In summary, the committee believes the Select Committee on Indian Affairs is a proven, timely and effective structure for the consideration of Indian affairs matters, including the remaining recommendations of the AIPRC, and recommends the extension of the select committee for 2 years, as provided in Senate Resolution 405, as amended.

HISTORY OF SENATE RESOLUTION 405

Senate Resolution 405 was submitted to the Senate by Senator Abourezk and 13 cosponsors on February 27, 1978, and it was referred to the Committee on Rules and Administration the same date. The committee held a hearing on the resolution on July 12, 1978, at which the following U.S. Senators testified:

Hon. Edward M. Kennedy of Massachusetts; Hon. James Abourezk of South Dakota, chairman of the Select Committee on Indian Affairs; Hon. Dewey F. Bartlett of Oklahoma, ranking minority member of the select committee; Hon. Barry M. Goldwater of Arizona; and Hon. Adlai Stevenson of Illinois.

The committee also heard the testimony of Kirke Kickingbird, executive director, Institute for the Development of Indian Law, and member of the National Congress of American Indians; John Borbridge, president, Sealaska, Inc.; and Chuck Trimble, director, United Effort Trusts.

HISTORY OF THE SELECT COMMITTEE

The temporary select committee was established by section 105 of Senate Resolution 4 and, pursuant to Senate Resolution 102, agreed to April 1, 1977, was authorized to expend from April 1, 1977, through February 28, 1978 (11 months), not to exceed $484,000 for inquiries and investigations. Senate Resolution 368, agreed to March 6, 1978, authorized the select committee to expend not to exceed $518,000 for inquiries and investigations during the period of March 1, 1978, through the close of the 95th Congress (10 months).

The provisions of section 105 of Senate Resolution 4 are as follows:

SEC. 105. (a)(1) There is established a temporary Select Committee on Indian Affairs (hereafter in this section referred to as the "select committee") which shall consist of five members, three to be appointed by the President of the Senate from among members of the majority party and two to be appointed by the President of the Senate from among members of the minority party. The select committee shall select a chairman from among its members.

(2) A majority of the members of the committee shall constitute a quorum thereof for the transaction of business, except that the select committee may fix a lesser number as a quorum for the purpose of taking testimony. The select committee shall adopt rules of procedure not inconsistent with this section and the rules of the Senate governing standing committees of the Senate.

(3) Vacancies in the membership of the select committee shall not affect the authority of the remaining members to execute the functions of the select committee.

(4) For purposes of paragraph 6 of rule XXV of the Standing Rules of the Senate, service of a Senator as a member or chairman of the select committee shall not be taken into account.

(b)(1) All proposed legislation, messages, petitions, memorials, and other matters relating to Indian affairs shall be referred tot he select committee.

(2) It shall be the duty of the select committee to conduct a study of any and all matters pertaining to problems and opportunities of Indians, including but not limited to, Indian land management and trust responsibilities, Indian education, health, special services, and loan programs, and Indian claims against the United States.

(3) The select committee shall from time to time report to the Senate, by bill or otherwise, its recommendations with respect to matters referred to the select committee or otherwise within its jurisdiction. (c)(1) For the purposes of this section, the select committee is authorized, in its discretion, (A) to make investigations into any matter within its jurisdiction, (B) to make expenditures from the contingent fund of the Senate, (C) to employ personnel, (D) to hold hear-

ings, (E) to sit and act at any time or place during the sessions, recesses, and adjourned periods of the Senate, (F) to require, by subpena, or otherwise, the attendance of witnesses and the production of correspondence, books, papers, and documents, (G) to take depositions and other testimony, (H) to procure the service of individual consultants or organizations thereof, in accordance with the provisions of section 202(i) of the Legislative Reorganization Act of 1946, and (I) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable basis the services of personnel of any such department or agency.

(2) The chairman of the select committee or any member thereof may administer oaths to witnesses.

(3) Subpenas authorized by the select committee may be issued over the signature of the chairman, or any member of the select committee designated by the chairman, and may be served by any person designated by the chairman or the member signing the subpena.

(d) The select committee shall cease to exist at the close of the Ninety-fifth Congress and, effective with the commencement of the Ninety-sixth Congress, jurisdiction over the matters specified in subsection (b)(1) and the duty specified in subsection (b)(2) are transferred to the Committee on Human Resources.

COMMITTEE AMENDMENT

The Committee on Rules and Administration has amended Senate Resolution 405 (in the nature of a substitute) by striking out language making the Select Committee on Indian Affairs a permanent select committee of the Senate, and inserting in lieu thereof language extending the select committee for 2 years (end of the 96th Congress).

Specifically, the resolution as reported would amend section 105(d) of Senate Resolution 4 to read as follows (existing text proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing text in which no change is proposed is shown in roman):

> (d) The select committee shall cease to exist [at the close of the Ninety-fifth Congress and, effective with the commence of the Ninety-sixth Congress,] *on January 2, 1981, and, effective on January 3, 1981*, jurisdiction over the matters specified in subsection (b)(1) and the duty specified in subsection (b)(2) are transferred to the Committee on Human Resources.

COMMITTEE ROLLCALL VOTE

In compliance with section 133 (b) and (d) of the Legislative Reorganization Act of 1946, as amended, the record of the rollcall vote in the Committee on Rules and Administration during its consideration of Senate Resolution 405 is as follows:

On an amendment proposed by Senator Hatfield: To extend the temporary Select Committee on Indian Affairs for two years. Approved, 7 yeas; 1 nay.

YEAS—7	NAYS—1
Mr. Williams*	Mr. Cannon
Mr. Clark*	
Mr. Ford	
Mr. Hatfield	
Mr. Griffin	
Mr. Baker*	
Mr. Pell	

*By proxy.

ADDITIONAL VIEWS OF MR. CANNON

The arguments given by the committee majority for abridging the principles of committee reorganization by continuing the Select Committee on Indian Affairs for another full Congress are not persuasive, in my opinion.

Possibly, even less justified is the provision of Senate Resolution 405 to further undermine the committee system reorganization by exempting members of the Indian Affairs Committee from the Senate rules generally limiting Senators to service on two major and one minor committee.

The fundamental principle which the Senate agreed to in the reorganization only 18 months ago was that the rules must firmly limit the number of committee and subcommittee assignments permitted each Senator in order to encourage consolidation of jurisdictions and stop the proliferation of committees and subcommittees, and especially to reduce wasteful demands on the time of Senators. The report of the Committee on Rules and Administration (95–2) states (p. 2):

> The resolution proposes to limit the number of committee assignments to each Senator, giving the Senators more time to prepare themselves for the consideration of the proposed legislation for which they are directly responsible. It is unfair to the Senators to have to spread their efforts too thinly. Under the present set-up some Senators have over 30 committee and subcommittee assignments with 4 or 5 of their committees frequently meeting at the same time—this is intolerable. This resolution generally allows each Senator only 3 committee assignments and 8 subcommittee assignments.

The report of the Temporary Select Committee To Study the Senate Committee System, headed by Senators Stevenson and Packwood, and the exhaustive review of its conclusions conducted by the Committee on Rules and Administration, document that the proliferation of assignments is the principal obstruction to an effective committee system, the foundation of the Senate as an institution.

The Senate agreed to the Committee on Rules and Administration's recommendation to strictly limit each Senator to two major and one minor committee assignment, with only a few well justified exemptions. As a matter of justice to Senators who complied, if not from regard for a rational committee system, the exemption from these limitations contained in Senate Resolution 405 is not warranted.

As a result of those assignment limitations and committee consolidations numerous Senators were forced or agreed to give up several committee and subcommittee assignments of long standing, and in some cases even to relinquish chairmanships and ranking minority positions.

A very few temporary exemptions for class A and class B committees were permitted by the rules. An additional few were ordered by the majority caucus for special reasons primarily related to the status of the Budget Committee. But nearly all of these exemptions expire at the close of this Congress, including even the "grandfather rights" of several senior Senators affirmed by the 1970 Legislative Reorganization Act.

Now Senate Resolution 405, as amended, would continue for 2 years a Select Committee on Indian Affairs whose members in my judgment are unwisely and unjustly exempt from the assignment limitations. The only similar exemptions which the rules permit in the 96th Congress will be for members of the Select Committee on Ethics (on which service is a matter of unrewarded and unsought duty to the Senate) and three Joint Committees—on the Library, on Printing, and on Taxation (whose members must, by law, come from certain standing committees).

The exception from committee assignment limitations granted members of the Select Committee on Indian Affairs in the 95th Congress was granted only because assurances were given that that committee would expire at the end of the Congress. The same exemption was given several other committees on the same basis and they similarly will expire. A continued exemption for another 2 years would place these Senators in a special category which cannot be justified.

Extra assignments outside the rules do not burden only the Senators so assigned. Every Senator—and the Senate as a whole—suffer from any proliferation in assignments through increased conflict in meetings, unnecessary duplications in work and jurisdiction.

Finally, it should be noted that some Senators do not have class B committee assignments in this Congress, and will not under present committee seizes have them in the next Congress. So Senators without class B assignments would be available for assignment to an Indian Affairs Committee. Or Senators wishing to serve on the Indian Affairs Committee should give up present class B assignments which other Senators may wish to have.

The Select Committee on Indian Affairs should not be exempted from rules governing committee assignment limitations in justice to the Senate as a whole, to the other committees which abide by those rules, and to Senators as individuals who have given up important assignments to abide by those rules.

There is the further argument advanced that the assignment of subjects dealing with Indian affairs to a subcommittee of the Committee on Human Resources will detract from the attention that such matters deserve. This criticism is specious on its face and cannot be supported by logic or fact.

The needs of native Americans can be more incisively dealt with by a permanent, legislative committee of major stature than any temporary select committee. Senators who want to really address this overall problem in the legislative process cannot hide this hard fact.

The progressive record of the Committee on Human Resources, to which Indian jurisdiction will attach, and its individual members certainly cannot be challenged. That committee has the capability

of addressing Indian needs more effectively than a temporary committee because its broad legislative jurisdiction encompasses all the major areas of social legislation in education, employment, health and welfare generally. Indian land and trust management can be folded into those concerns smoothly within an Indian Affairs Subcommittee. Certainly some Indian problems undoubtedly should be addressed uniquely and they can be addressed effectively in the context of comprehensive national legislation produced by a major standing committee.

It should be noted that the House of Representatives has not moved to institute a separate committee on this subject. Nor has the Senate created a separate committee to consider the affairs of other ethnic and national groups which so richly comprise this country's population.

The Senate does have three narrow jurisdiction committees, Veterans' Affairs, Aging, and Small Business. But I would remind Senators that these are committees that existed long before the 1977 Senate Committee reorganization was approved. Indian Affairs did not exist as a separate committee or jurisdiction before the 95th Congress. Instead, it was a subcommittee of the Committee on Interior and Insular Affairs. At the time committee reorganization was voted in 1977, the establishment of the Select Committee on Indian Affairs was agreed to without question as a temporary transition measure.

Moreover, during the reorganization process at the beginning of the 95th Congress, the Senate carefully reviewed the narrow jurisdiction committees and consolidated them, including three standing committees with long histories, within the major standing committees. These were the Committees on Post Office and Civil Service, Aeronautical and Space Sciences, and the District of Columbia. The groups most interested in those consolidated committees now receive full hearings, in fact probably better hearings, from "their own" subcommittees within strong and major standing committees of the Senate.

Additionally, it must be recalled that the Select Committee on Nutrition and Human Needs had its jurisdiction transferred to its present major parent Committee on Agriculture, Nutrition, and Forestry at the beginning of the second session of the 95th Congress without any dire consequences that have come to the forefront. The Chairman of the former Select Committee on Nutrition and Human Needs is the present Nutrition Subcommittee Chairman. There is no substantive reason why a transfer of the work of the Select Committee on Indian Affairs cannot be just as smooth and effective.

In summary, no Senator wishes to diminish the representation or attention given to the Indian affairs of this country by the Senate's committee system of legislative procedure. Personally, I wish to enhance that representation and help the Senate keep an effective committee system responsive to all the needs and all the people of this country. The reorganization plan agreed to by the Senate in 1977 which passed the matter of Indian affairs to the Committee on Human Resources at the conclusion of the 95th Congress will strengthen the representation of our native Americans. The continued existence of a separate minor committee for this important subject will weaken their voice in national policy.

Additionally, I am supportive of the position taken by Senator Stevenson, chairman of the Temporary Select Committee To Study the Senate Committee System, that when it comes down to a focus there is the question of whether the Senate is capable of standing behind its own reorganization when the particularized pressures are on.

The Senate, as each Senator knows if he listens to his inner conscience, cannot operate effectively and efficiently unless it disperses responsibility among communities. To meet that responsibility the Senate acted 18 months ago to deal with the entire committee system. Now to peck away at that decision with the pressures that are able to center on a single area to the detriment of the whole cannot be justified as fully responsible. I am hopeful that the Senate will be able to stand firm with its last decision and permit the responsibilities of the temporary Select Committee on Indian Affairs to be passed along to the Committee on Human Resources as previously voted.

For the above reasons, I cannot support Senate Resolution 405, as amended, and will cast my vote in opposition.

HOWARD W. CANNON.

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Calendar No. 970

95TH CONGRESS, 2d Session | SENATE | REPORT No. 95-1048

PROVIDING FOR AN ADDITIONAL ASSISTANT SECRETARY OF COMMERCE

JULY 28 (legislative day, MAY 17), 1978.--Ordered to be printed

Mr. RIBICOFF, from the Committee on Governmental Affairs, submitted the following

REPORT

[To accompany S. 1624]

The Committee on Governmental Affairs, to which was referred the bill (S. 1624) to authorize an additional Assistant Secretary of Commerce, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

The amendments are as follows:

On page 1, line 8, strike the words "Secretary shall receive compensation at the rate prescribed by law for Assistant Secretaries of Commerce," and insert in lieu thereof "Secretary".

On page 2, strike "(8)." at the end of line 4, and insert in lieu thereof "(9).".

PURPOSE

S. 1624 would authorize an additional Assistant Secretary in the Department of Commerce, increasing the number of Assistant Secretaries from eight to nine. As in the case of existing Assistant Secretaries, the position would be filled by Presidential appointment, subject to Senate confirmation, at level IV ($50,000 per annum) of the executive schedule.

NEED FOR LEGISLATION

The Department of Commerce advised the committee that this position is required in order to establish the office of an Assistant Secretary for Economic and Statistical Affairs who would be the principal adviser to the Secretary of Commerce and to other officials within the Department on economic and statistical matters. The incumbent would also serve as the Department's liaison with the

Council of Economic Advisers, the Council on Wage and Price Stability, and other high-level economic and statistical officials of the Government. Finally, the new Assistant Secretary would exercise policy direction and general supervision over the Bureau of the Census, the Bureau of Economic Analysis, and the Office of Federal Statistical Policy and Standards.

The Department advised further that these functions are now being performed by the Chief Economist for the Department, but that experience with this arrangement has shown effective performance of these functions requires a top-level official who has the confidence of the Secretary and the administration, and who has been appointed by the President, subject to Senate confirmation. An individual in such a high-level position would be better able to participate in and have an impact upon departmental and Government-wide economic and statistical policy decisions. This is especially true in light of the following recent actual and proposed major expansions in the duties and responsibilities of the individual presently occupying the position of Chief Economist:

First, the responsibilities of the Chief Economist in the area of economic forecasting have increased due to the regular participation of the Department in interagency forecasting exercises. Other agencies (the Council of Economic Advisers, and the Treasury and Labor Departments) are represented in this forecasting exercise by Presidential appointees at the Assistant Secretary level or its equivalent.

Second, the Assistant Secretary for Economic and Statistical Affairs would have primary responsibility for improving the coordination and effectiveness of the entire Federal statistical program. This responsibility arose from the transfer, under Reorganization Plan No. 1 of 1977, and Executive Order 12013, of functions and personnel from the Statistical Policy Division of the Office of Management and Budget to the newly created Office of Federal Statistical Policy and Standards within the Department of Commerce, under the direct supervision of the Office of Chief Economist.

Third, the Assistant Secretary will have the responsibility for building and supervising an industrial economic analysis staff, since the present industrial analysis capability of the Federal Government is generally agreed to be inadequate to meet present needs. The Department has been instructed by the President as part of Reorganization Plan No. 1 of 1977, to strengthen its capabilities generally and specifically to provide certain needed information and analysis to the Council on Wage and Price Stability. The Department plans to accomplish this by transferring existing personnel and resources within the Department to an office reporting to the proposed Assistant Secretary, where it is felt that these resources and personnel will be more effectively utilized.

Finally, the Department advises that, while supervision of the Census Bureau is not a new function, it is one of increased importance due to the approach of the 1980 Decennial Census of Population and to the vastly increased use of Census Bureau data for the allocation of Federal funds under revenue sharing, comprehensive employment and training (CETA) program, and other programs.

Committee Action

The committee adopted two amendments to the bill which are technical and perfecting and make no change in the substance of the bill.

Following consideration of the information submitted by the Department of Commerce, the committee concluded that the action proposed by S. 1624 is justified and should serve to enable the Department to achieve the most efficient management of its responsibilities.

Cost Estimate

The Congressional Budget Office has submitted the following cost estimate with respect to S. 1624:

Cost estimate:

Fiscal year:	*Thousands*
1978	$28.6
1979	62.5
1980	62.5
1981	62.5
1982	62.5
1983	63.5

The costs of this bill fall within budget function 370.

Basis of estimate: For purposes of this estimate, it has been assumed that this legislation will become effective on April 15, 1978 Although the additional assistant secretary position is expected to be filled by someone currently in an executive level IV position at the same salary, the present slot belongs to the Presidential pool and will be returned to the pool for another use. Therefore, the full cost of an additional level IV position has been included in this estimate. The $50,000 salary has not been inflated over the projection period as no precedent has been set on periodic increases in executive level salaries to make any assumption of adjustments over the next 5 years. An additional 25 percent, however, has been included in the estimate for overhead and benefits.

Regulatory Impact

The committee has been informed that the position provided for will result only in a change of designation of personnel already in place. Accordingly, it appears that enactment of this legislation will have no regulatory impact.

Changes in Existing Law

In compliance with subsection 4 of rule XXIX of the Standing Rules of the Senate, changes made by the bill as reported are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 5, UNITED STATES CODE

* * * * * * *

Sec. 5315. Positions at level IV

Level IV of the executive schedule applies to the following positions for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

* * * * * * *

(12) Assistant Secretaries of Commerce [(8)] *(9)*.

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Calendar No. 972

95TH CONGRESS
2d Session

SENATE

REPORT
No. 95-1049

REORGANIZATION PLAN NO. 2 OF 1978

JULY 28 (legislative day, MAY 17), 1978.—Ordered to be printed

Mr. RIBICOFF, from the Committee on Governmental Affairs, submitted the following

REPORT

together with

MINORITY VIEWS

[To accompany S. Res. 464]

The Committee on Governmental Affairs, to which was referred the resolution (S. Res. 464) to disapprove Reorganization Plan No. 2 of 1978, having considered the same, reports unfavorably thereon and recommends that the resolution do not pass.

PURPOSE OF THE PLAN

Reorganization Plan No. 2 of 1978 is part of the President's comprehensive proposal to reform the Federal personnel management system.

The stated purpose of the Plan is to "create new institutions to increase the effectiveness of management and strengthen the protection of employee rights." Together, the Reorganization Plan and the Civil Service Refort Act present a complementary set of reforms in the civil service structure and system. The Plan establishes the organizational framework that is essential to achieving lasting improvements in the administration of the Federal personnel system. Its acceptance by Congress will make possible the attainment of the substantive reforms embodied in the Civil Service Reform Act.

Among the structural deficiencies that Reorganization Plan No. 2 is designed to overcome are the following:

1. *The conflicting roles of the Civil Service Commission.*—The Commission has so many conflicting roles that it is unable to perform all of them adequately. At one and the same time it is expected to serve the President in providing managerial leadership for the personnel man-

agement functions in the executive branch, while serving as the protector of the integrity of the merit system, protecting employee rights and performing a variety of adjudicatory functions.

2. *Lack of appropriate staff to the President for personnel management.*—The President must rely on a semi-independent body separated by structure and tradition from the Chief Executive. As a consequence, Presidential effectiveness in directing Federal personnel management is weakened and problems do not receive the attention they should.

3. *Lack of political neutrality.*—The Civil Service Commission, despite its presumed political neutrality, has not been an effective deterrent to partisan political or other abuses of the merit system.

4. *Fragmented labor-management responsibilities.*—Labor-management functions are fragmented among the Federal Relations Council, the Federal Service Impasses Panel, the Department of Labor, and the Civil Service Commission. There is a widely acknowledged need to create one institution which will be responsible for functions in the Federal labor-relations area.

5. *Over-centralization of personnel management functions in the Civil Service Commission*—Control of personnel management functions is so centralized that it greatly adds to the paperwork burden, contributes to system inflexibility and causes excessive delays.

In his Message to Congress on May 23, the President stated:

> I am confident that this Plan and the companion civil service reform legislation will both lead to more effective protection of Federal employees' legitimate rights and a more rewarding workplace. At the same time, the American people will benefit from a better managed, more productive and more efficient Federal Government.

Major Provisions of Reorganization Plan No. 2

Reorganization Plan No. 2 provides the structural framework for the Civil Service Reform legislation the President has submitted to Congress (S. 2640).

The plan replaces the present Civil Service Commission with two new agencies: an Office of Personnel Management and a Merit Systems Protection Board.

The OPM will be the central personnel agency of the Federal government. The Office will aid the President in preparing rules for the administration of civil employment; advise the President on civil employment matters; execute, administer and enforce civil service laws, rules and regulations; coordinate research in improved personnel management; and recommend to the President actions to apply merit principles in all areas of personnel management.

The OPM will be headed by a Director, appointed by the President and confirmed by the Senate.

The Board will be headed by a bipartisan panel of three members appointed by the President and confirmed by the Senate. They will serve 6-year, staggered terms. The Board will exercise all of the adjudicatory functions now vested in the Civil Service Commission, and it will serve as the major protector of the merit system and employee rights.

The plan creates, mithin the Board, a Special Counsel to investigate and prosecute political abuses and merit system violations. The Special Counsel mill be appointed to a 4-year term by the President and confirmed by the Senate. The Special Counsel will be independent of, and not subject to, the Board.

Finally, the Reorganization Plan establishes a Federal Labor Relations Authority as a new agency responsible for administering the Federal Labor Relations program. The Authority will assume functions now held by a Federal Labor Relations Council and certain duties performed by the Assistant Secretary of Labor for Labor-Management relations. These include: determining appropriate bargaining units, supervising elections and certifying exclusive bargaining units; investigating and prosecuting unfair labor practice complaints; and deciding appeals from determinations of issues alleged to be non-negotiable. The plan also continues in existence the Federal Service Impasses Panel, which will operate as a distinct entity within the Authority.

The Authority will consist of a chairman, two members and a General Counsel, all appointed by the President and confirmed by the Senate.

The plan will take effect at such time or times, on or before January 1, 1979, as the President shall specify, but not sooner than the earliest date allowable under section 906 of title 5, United States Code.

Hearings

The committee held joint hearing on both the Civil Service Reform leigslation (S. 2640) and Reorganization Plan No. 2. The President submitted S. 2640 to Congress in March, but the plan was not submitted formally until May. Before the hearings began in March, however, the administration had sent to the committee a draft of the plan which did not differ significantly from the version sent up in May. Thus, the witnesses' testimony and the questions from committee members covered both S. 2640 and the reorganization plan.

There were 12 days of hearings held, during which 86 individuals representing 55 organizations testified. In addition, the committee wrote to almost 90 experts in public administration and personnel management requesting their views on the bill and the plan. A large majority of the respondents expressed strong support for the reforms. Most of the witnesses who testified also supported both the bill and the plan.

Cost Estimate

The cost estimate prepared by the Congressional Budget Office is contained in the following letter received from its Director:

July 24, 1978.

Hon. Abraham Ribicoff,
Chairman, Committee on Governmental Affairs,
Washington, D.C.

Dear Mr. Chairman: Pursuant to section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed Senate Resolution 464, as ordered reported by the Senate Committee

on Governmental Affairs, July 24, 1978. This resolution would disapprove the reorganization plan proposed by the President for the reorganization of the Civil Service Commission.

Based on this review, it is estimated that the cost of implementing this reorganization plan would be approximately $3 million in the first year, fiscal year 1979. Thereafter the cost would be about $2.7 million in ,scal year 1980, increasing each year with inflation to $3.2 million in fiscal year 1983.

These costs include the salaries and benefits of additional personnel in the Office of Personnel Management, the eMrit Systems Protection Board, and the Federal Labor Relations Authority, as well as projected costs for research in personnel management. The estimate also includes approximately $1 million in fiscal year 1979 for relocation of personnel.

Should the committee so de.ire, we would be pleased to provide further details on this estimate.

Sincerely,

ALICE M. RIVLIN, *Director.*

COMMITTEE ACTION

On July 24, the Governmental Affairs Committee, by a vote of 12 to 2, reported the plan to the Senate with a recommendation opposing the resolution of disapproval that was pending before the Senate.

ROLLCALL VOTES

July 24, 1978

Vote on committee disapproval of pending resolution of disapproval regarding Reorganization Plan No. 2.

Aye	Nay
Ribicoff	Stevens
Jackson	Mathias
Eagleton	
Chiles	
Nunn	
Sasser	
Humphrey	
Javits	
Roth	
Danforth	
Heinz	
Proxy	
Percy	

SECTION-BY-SECTION ANALYSIS

PART I. OFFICE OF PERSONNEL MANAGEMENT

Section 101. Establishment of the Office of Personnel Management and its Director and other matters

This section provides for an independent establishment in the executive branch to be called the Office of Personnel Management. It

provides for the appointment by the President of the Office of Personnel Management, by and with the advice and consent of the Senate, and for his compensation at Level II of the Executive Schedule. It further abolishes the position referred to in 5 U.S.C. 5109(b), involving duties related to retirement, life insurance and health benefits.

Section 102. Transfer of functions

This section transfers, except as otherwise specified in the Plan, all of the functions now vested by statute in the U.S. Civil Service Commission, its Chairman, or the Boards of Examiners established under 5 U.S.C. 1105, to the Director of the Office of Personnel Management. This transfer of functions effects essentially the transfer of the policymaking, executive, and managerial functions.

Section 103. Deputy Director and Associate Directors

This section provides for the appointment by the President of a Deputy Director of the Office of Personnel Management, by and with the advice and consent of the Senate, and for his compensation at Level III of the Executive Schedule. The duties of the Deputy are to be prescribed by the Director and the Deputy shall act for the Director during his absence or disability of during a vacancy in the Office of the Director.

This section further provides for the appointment within the excepted service of as many as five Associate Directors who shall be compensated at Level IV of the Executive Schedule and whose position titles shall be determined by the Director.

Section 104. Functions of the Director

This section provides that the functions of the Director shall include, but not be limited to: as the President may request, aiding the President in preparing rules of the administration of civilian employment now within the jurisdiction of the Civil Service Commission; advising the President, at his request, on any civilian employment matters now within the jurisdiction of the Commission. This section also articulates the Director's responsibility, except to the extent that such functions remain vested in the Merit System Protection Board or are transferred to the Special Counsel, for executing, administering and enforcing the civil service rules and regulations of the President and of the Office and the statutes governing them, and other activities of the Office, including retirement and classification matters. This section authorizes the Director to conduct or otherwise provide for studies and research for the purpose of improving personnel management and recommending to the President actions to further the efficiency of the Civil Service and the systematic application of merit systems principles in areas such as selection, promotion, transfer, performance, pay conditions of service, tenure and separation. Finally, this section assigns the Director responsibility for performing the training responsibilities now performed by the Commission as set forth in 5 U.S.C., chapter 41.

On July 11, the President submitted an amendment to Section 104(c) of the Plan which provided that the OPM Director, where appropriate, shall provide to the public a reasonable opportunity to comment and submit written views on the implementation and interpretation of OPM rules and regulations.

Section 105. Authority to Delegate functions.

The section provides that the Director may delegate to the heads of agencies employing persons in the competitive service the performance of any function or portion thereof transferred under this Plan as it relates to employees or applicants for employment in such agencies.

PART II. MERIT SYSTEMS PROTECTION BOARD

Section 201. Merit Systems Protection Board

Subsection (a) changes the designation of the United States Civil Service Commission to the Merit Systems Protection Board and redesignates the Commissioners of the Civil Service Commission as members of the Board. Subsection (b) affirms that the Chairman of the Board will be its chief executive and administrative officer and abolishes the position of Executive Director currently established in section 1103(d) of title 5, United States Code.

By redesignating the Civil Service Commission the Merit Systems Protection Board rather than abolishing the Commission and creating a new entity by that name, the 6-year terms of the Commissioners are preserved. (The Reorganization Act does not allow for the creation of an office with a term longer than 4 years.)

Section 202. Functions of the Merit Systems Protection Board and related matters

Subsection (a) sets forth the hearing, adjudicatory, and appeals authority of the Board. It authorizes the Board to hear and decide the following statutory appeals and matters currently adjudicated by the Commission:

(1) Political activities of certain State, local, and Federal employees (Hatch Act violations) (5 U.S.C. 1504–1507 and 7325);

(2) Withholding of within-grade salary increases (5 U.S.C. 5335);

(3) Removal of an administrative law judge (5 U.S.C. 7521);

(4) Adverse actions against preference eligibles (5 U.S.C. 7701);

(5) Determinations by the Bureau of Retirement, Insurance, and Occupational Health concerning retirement applications and annuities (5 U.S.C. 8347(d)); and

(6) Restoration to duty following military service (38 U.S.C. 2023).

Subsection (b) provides that the Board shall retain the function now vested in the Commission or its Chairman of enforcing its adjudicative decisions in those matters covered in subsection (a) of this section pursuant to the provisions of 5 U.S.C. 1104 (a)(5) and (b)(4).

Subsection (c) provides that a member of the Board may request an interpretation of regulations or policy directives issued by the Office of Personnel Management in connection with a matter before the Board.

Subsection (d) provides that the Board must notify the Director of the Office of Personnel Management whenever the interpretation or application of a rule, regulation or policy directive issued by the Office is at issue in any matter before the Board and give the Director standing to intervene in the proceedings.

Subsections (e) and (f) provide for the designation, by the Board, of chairmen of performance rating boards and, by the chairman, of a chairman of boards of review in connection with the removal of air traffic controllers from air traffic controller positions; respectively.

Subsection (g) accords the Board authority to conduct special studies relating to the Civil Service, and to other merit systems in the Executive Branch, and to report to the President and the Congress concerning whether the public interest in a workforce free of personnel practices prohibited by law or regulations is being protected. The Board will have access to personnel records and information collected by the Office of Personnel Management to the extent permitted by law, and will be authorized to require additional reports from other agencies as needed. The Board shall make recommendations to the President and Congress as it deems appropriate.

Subsection (h) authorizes the Board to delegate any of its administrative functions to its staff. Subsection (i) authorizes the Board to issue regulations governing its functions, including regulations defining its review procedures, the time limits for appealing, and the rights and responsibilities of parties to appeals. The regulations shall be published in the Federal Register. Subsection (i) also provides that the Board shall not issue advisory opinions.

Section 203. Savings provision

This section provides that the Board shall accept appeals from agency actions effected prior to the effective date of the Plan. This section provides that: (1) proceedings before the Federal Employees Appeals Authority shall continue before the Board; (2) proceedings before the Appeals Review Board and before the Civil Service Commission on appeal from decisions of the Appeals Review Board shall continue before the Board. It is not intended, however, that matters continued before the Board must be heard by the Board *en banc*. This section further provides that other employee appeals heard by boards or bodies pursuant to law or regulation shall continue to be processed pursuant to those laws or regulations. The section does not affect the right of any employee to judicial review.

Section 204. The Special Counsel

Subsection (a) provides for the appointment by the President, with the advice and consent of the Senate, of a Special Counsel as the head of a separate Office located within the Board. Subsection (a) further provides that the Special Counsel's appointment shall be for a term of 4 years and that he shall be compensated at Level IV of the Executive Schedule. It is intended that the Special Counsel shall be independent of the Board and not subject to direction by the Board.

Subsection (b) of this section transfers to the Special Counsel all functions of the Commission relating to investigations of prohibited political activity on the part of Federal employees (Chapter 73 of title 5 U.S. Code) and of certain State and local employees (Chapter 15 of title 5, U.S. Code). Additionally, it authorizes the Special Counsel to investigate to ascertain whether information that should have been disclosed under the Freedom of Information Act has been withheld by a Federal official in a capricious or arbitrary manner, under 5 U.S.C. 552(a)(4)(F).

Subsection (c) authorizes the Special Counsel to investigate, pursuant to 5 U.S.C. 1303, allegations of personnel practices which are prohibited by law or regulation. The initiation of such investigations would not be contingent on the receipt of a formal complaint. The Special Counsel could investigate on his own initiative based on information from any source.

Subsection (d) provides that when the Special Counsel determines that there are personnel practices prohibited by law or regulation which require corrective action, he shall report his findings and recommendations to the Chairman of the Merit Systems Protection Board, to the agency affected and to the Office of Personnel Management, and may report such findings to the President.

Subsection (e) provides that when he believes disciplinary action is warranted, the Special Counsel may prepare charges based on investigations carried out under this section against employees within the jurisdiction of the Board. (Employee coverage of matters within the Special Counsel's jurisdiction is determined by provisions of the pertinent statute or regulation.) Charges with supporting documentation are to be presented to the Board, which will determine whether the charges will be adjudicated by the Board itself, or by an administrative law judge designated by the Board. In the case of a Presidential appointee, the Special Counsel would refer the results of the investigation to the President.

Subsections (f) and (g) authorize the Special Counsel to appoint personnel needed to perform the functions of his office and to issue rules and regulations governing the receipt and investigation of matters under this section. The Special Counsel's regulations must be published in the Federal Register.

Subsection (h) provides that the Special Counsel shall issue no advisory opinions.

PART III. FEDERAL LABOR RELATIONS AUTHORITY

Section 301. Establishment of the Federal Labor Relations Authority

Subsection (a) of this section establishes the Federal Labor Relations Authority as an independent establishment in the executive branch; provides that the Authority be composed of three members, one of whom shall be the chairman, and not more than two of whom shall be members of the same political party; provides that members of the Authority are to hold no other office or position, except where provided by law or by the President.

Subsection (b) of this section provides that members of the Authority be appointed by the President, by and with the advice and consent of the Senate; provides that members of the Authority be compensated at the rate for Level IV of the Executive Schedule; provides that the President designate one member of the Authority to serve as Chairman; and provides that the chairman be compensated at the rate of Level III of the Executive Schedule.

Subsection (c) of this section provides for staggered terms of four years for members of the Authority, with the initial members being appointed for 2 and 3 years and the Chairman for 4 years, and provides that an individual chosen to fill a vacancy shall be appointed for the unexpired term of the member he replaces.

Subsection (d) of this section provides that the Authority shall make an annual report to the President for transmittal to the Congress.

Section 302. Establishment of the General Counsel of the Authority

This section establishes a General Counsel for the Authority. It provides that the General Counsel shall be appointed by the President by and with the advice and consent of the Senate for a term of 4 years and provides that he shall be compensated at the rate set for Level V of the Executive Schedule. This section provides further that the General Counsel shall perform duties as prescribed by the Authority, including but not limited to the duty of determining and presenting the facts required by the Authority to decide unfair labor practice complaints.

Section 303. The Federal Service Impasses Panel

This section transfers the existing Federal Service Impasses Panel to the Authority and provides for its continuance as a distinct organizational entity within the Authority.

Section 304. Functions

This section transfers, subject to the provisions of section 306, to the Authority: the functions of the Federal Labor Council under Executive Order 11491, as amended; the functions of the Civil Service Commission under sections 4(a) and 6(e) of Executive Order 11491, as amended; the functions of the Assistant Secretary of Labor for Labor Management Relations under Executive Order 11491, as amended, except for those functions related to alleged violations of the standards of conduct for labor organizations under section 6(a)(4) of that Executive Order; and to the panel, the functions and authorities of the Federal Service Impasses Panel under Executive Order 11491, as amended.

Section 305. Authority decisions

This section provides that the decisions of the Authority on any matter within its jurisdiction shall be final and not subject to judicial review.

Section 306. Other provisions

This section provides that, unless and until they are modified, revised, or revoked, all policies, regulations, and procedures established, and decisions issued, under Executive Order 11491, as amended, shall remain in full force and effect. This section reserves to the President the power to modify the functions transferred to the Authority and the Impasses Panel pursuant to Section 304 of this Plan.

Section 307. Savings provision

This section provides that all matters which relate to functions transferred by Section 304 to the Authority, which are pending on the effective date of the plan before the Federal Labor Relations Council, the Vice Chairman of the Civil Service Commission, or the Assistant Secretary for Labor-Managament Relations shall continue before the Authority under its rules and procedures. All matters pending before the Federal Service Impasses Panel shall continue before the Panel under its rules and procedures.

PART IV. GENERAL PROVISIONS

Section 401. Incidental transfers

Section 401 provides for the transfer of personnel, property, records, unexpended balances of appropriations, allocations and other funds employed, used, held, available or to be made available in connection with the functions transferred under this plan to the appropriate agency or component thereof at such time as the Director of the Office of Management and Budget shall determine. No unexpended balances transferred may be used, however, for purposes other than those for which the appropriation was originally made. The Director of the Office of Management and Budget is authorized to terminate the affairs of any agency abolished by this Plan and to take such further measures as may be needed to effectuate the purposes of the plan.

Section 402. Interim officers

Section 402 authorizes the President to appoint employees in the executive branch at the time of the reorganization to act as Director and Deputy Director of the Office of Personnel Management, as Special Counsel, as Chairman and members of the Federal Labor Relations Authority, as Chairman and members of the Federal Service Impasses Panel and as General Counsel of the Authority, until those offices are filled under the provisions of this plan or by recess appointment. The intent is to carry over the existing Federal Service Impasses Panel into the new Federal Labor Relations Authority. In addition, the President would be entitled to authorize that these officials be compensated in accordance with the salaries specified for the offices mentioned above, in lieu of other compensation from the United States. The redesignation of the Civil Service Commission as the Merit Systems Protection Board in no way alters or interferes with the incumbency or term of office of the duly appointed chairman, vice-chairman, or member of the Civil Service Commission who becomes by virtue of this plan, chairman, vice-chairman, or member of the Board.

Section 403. Effective date

This section provides that the Plan shall take effect at such time or times, on or before January 1, 1979, as the President shall specify, but not sooner than the earliest date allowable under section 906 of title 5, United States Code.

Minority Views of Mr. Mathias and Mr. Stevens

We strongly favor civil service reform as a further means of improving the operations of government. However, we are deeply troubled by the committee's premature action on the reorganization plan. This plan should not be adopted until some version of S. 2640 is enacted into law. The President's plan is an integral part of his comprehensive reform package. It is inextricably intertwined with S. 2640, one of the most complex bills pending before this Congress. We can cite several examples of these interrelationships.

The plan creates an Office of Personnel Management (OPM) that assumes most of the functions and powers of the present bipartisan Civil Service Commission. The Director of OPM would have the responsibility to assure compliance with the Civil Service laws and

regulations. This one person will have enormous power and authority to affect the quality of the civil service.

The fundamental purpose of the Civil Service Act of 1883 was to preclude federal offices "from being used as reservoirs of political patronage or ordinary appliances of party power". Accordingly, the proponents of the merit system established the three-member, bipartisan Civil Service Commission. They were confident that an organization independent of political influences would be in the interest of the country and for the good of all.

This committee has insured that S. 2640 contains many vital safeguards against the possibilities for the Director's use of this power for personal or political favoritism. Now the Congress needs to carefully consider the legislation to determine whether the safeguards in the bill deal adequately with the added risks of the transfer of authority.

Additionally, should the plan go into effect prior to enactment of the legislation, there would be no merit principles in the law, and no prohibited personnel practices detailed. The skeletal structure would be there with none of the building blocks.

Finally, we know that the House Post Office and Civil Service Committee included Hatch Act reform provisions in its version of the legislation. If the provisions of this reform package are combined with Hatch Act reform, we will see the end of American government as we know it today. This action by the House committee raises the real possibility that we will see an impasse with this legislation. It would be irresponsible of this Congress to allow this Reorganization Plan to go into effect without first working its will on the bill. We are certain that enactment of any civil service reform legislation during this session will be a long and torturous process.

Senator Stevens and I introduced a Resolution of Disapproval (S. Res. 462) this past May. It reflects our belief that it is inappropriate to allow the reorganization plan to go into effect until the Congress is much farther along in reaching decisions on the bill.

APPENDIX I

STATUTORY REFERENCES FOR FUNCTIONS TRANSFERRED BY REORGANIZATION PLAN NO. 2 OF 1978

The statutory references included herein were prepared by the American Law Division of the Congressional Reference Service. They were concurred in by the Office of Management and Budget.

PRESIDENT'S REORGANIZATION PROJECT,
Washington, D.C., July 27, 1978.

Hon. ABRAHAM RIBICOFF,
Chairman, Committee on Governmental Affairs,
U.S. Senate, Washington, D.C.

DEAR CHAIRMAN RIBICOFF: We have received and reviewed the statutory references relating to Reorganization Plan No. 2 of 1978 prepared by the American Law Division of the Congressional Research Service, a copy of which is attached to this letter. Based upon this review, the Office of Management and Budget agrees that these references describe the basic statutory intent of Reorganization Plan No. 2 of 1978.

Sincerely,

HARRISON WELLFORD,
Executive Associate Director
for Reorganization and Management.

Attachment.

REORGANIZATION PLAN NO. 2 OF 1978

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, May 23, 1978, pursuant to the provisions of chapter 9 of title 5 of the United States Code.

PART I. OFFICE OF PERSONNEL MANAGEMENT

Section 101. Establishment of the Office of Personnel Management and its Director and other matters

There is hereby established as an independent establishment in the executive branch, the Office of Personnel Management (the "Office"). The head of the Office shall be the Director of the Office of Personnel Management (the "Director"), who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be compensated at the rate now or hereafter provided for level II of the Executive Schedule. The position referred to in 5 U.S.C. 5109(b) is hereby abolished.[1]

Section 102. Transfer of functions

Except as otherwise specified in this Plan, all functions vested by statute in the United States Civil Service Commission,[2] or the

Chairman of said Commission,[3] or the Boards of Examiners established by 5 U.S.C. 1105[4] are hereby transferred to the Director of the Office of Personnel Management.

Section 103. Deputy Director and Associate Directors

(a) There shall be within the Office a Deputy Director who shall be appointed by the President by and with the advice and consent of the Senate and who shall be compensated at the rate now or hereafter provided for level III of the Executive Schedule. The Deputy Director shall perform such functions as the Director may from time to time prescribe and shall act as Director during the absence or disability of the Director or in the event of a vacancy in the Office of the Director.

(b) There shall be within the Office not more than five Associate Directors, who shall be appointed by the Director in the excepted service, shall have such titles as the Director shall from time to time determine, and shall receive compensation at the rate now or hereafter provided for level IV of the Executive Schedule.

Section 104. Functions of the Director

The functions of the Director shall include, but not be limited to, the following:

(a) Aiding the President, as the President may request, in preparing such rules as the President prescribes, for the administration of civilian employment now within the jurisdiction of the United States Civil Service Commission.

(b) Advising the President, as the President may request, on any matters pertaining to civilian employment now within the jurisdiction of the U.S. Civil Service Commission.

(c) Executing, administering and enforcing the Civil Service rules and regulations of the President and the Office and the statutes governing the same, and other activities of the Office including retirement and classification activities except to the extent such functions remain vested in the Merit Systems Protection Board pursuant to section 202 of this plan, or are transferred to the Special Counsel pursuant to section 204 of this plan.

(d) Conducting or otherwise providing for studies and research for the purpose of assuring improvements in personnel management, and recommending to the President actions to promote an efficient Civil Service and a systematic application of the merit system principles, including measures relating to the selection, promotion, transfer, performance, pay, conditions of service, tenure, and separations of employees.

(e) Performing the training responsibilities now performed by the United States Civil Service Commission as set forth in 5 U.S.C. Chapter 41. [5]

Section 105. Authority to delegate functions

The Director may delegate from time to time, to the head of any agency employing persons in the competitive service, the performance of all or any part of those functions transferred under this plan to the Director which relate to employees, or applicants for employment, of such agency.

PART II. MERIT SYSTEMS PROTECTION BOARD

Section 201. Merit Systems Protection Board

(a) The U.S. Civil Service Commission is hereby redesignated the Merit Systems Protection Board. The Commissioners of the United States Civil Service Commission [6] are hereby redesignated as members of the Merit Systems Protection Board (the "Board").

(b) The Chairman of the Board shall be its chief executive and administrative officer. The position of Executive Director, established by 5 U.S.C. 1103(d), is hereby abolished. [7]

Section 202. Functions of the Merit Systems Protection Board and related matters

(a) There shall remain with the Board the hearing, adjudication, and appeals functions of the United States Civil Service Commission [8] specified in 5 U.S.C. 1104(b)(4) (except hearings, adjudications and appeals with respect to examination ratings), and also found in the following statutes:

(i) 5 U.S.C. 1504–1507, 7325, 5335, 7521, 7701 and 8347(d);

(ii) 38 U.S.C. 2023

(b) There shall remain with the Board the functions vested in the United States Civil Service Commission, or its Chairman, pursuant to 5 U.S.C. 1104 (a)(5) and (b)(4) to enforce decisions rendered pursuant to the authorities described in Subsection (a) of this Section. [9]

(c) Any member of the Board may request from the Director, in connection with a matter then pending before the Board for adjudication, an advisory opinion concerning interpretation of rules, regulations, or other policy directives promulgated by the Office of Personnel Management.

(d) Whenever the interpretation or application of a rule, regulation, or policy directive of the Office of Personnel Management is at issue in any hearing, adjudication, or appeal before the Board, the Board shall promptly notify the Director, and the Director shall have the right to intervene in such proceedings.

(e) The Board shall designate individuals to chair performance rating boards established pursuant to 5 U.S.C. 4305.[10]

(f) The Chairman of the Board shall designate representatives to chair boards of review established pursuant to 5 U.S.C. 3383(b).[11]

(g) The Board may from time to time conduct special studies relating to the Civil Service, and to other merit systems in the Executive Branch and report to the President and the Congress whether the public interest in a work force free of personnel practices prohibited by law or regulations is being adequately protected. In carrying out this function the Board shall make such inquiries as may be necessary, and, to the extent permitted by law, shall have access to personnel records or information collected by the Office of Personnel Management and may require additional reports from other agencies as needed. The Board shall make such recommendations to the President and the Congress as it deems appropriate.

(h) The Board may delegate the performance of any of its administrative functions to any officer or employee of the Board.

(i) The Board shall have the authority to prescribe such regulations as may be necessary for the performance of its functions. The Board shall not issue advisory opinions. The Board may issue rules and regulations, consistent with statutory requirements, defining its review

procedures, including the time limits within which an appeal must be filed and the rights and responsibilities of the parties to an appeal. All regulations of the Board shall be published in the Federal Register.

Section 203. Savings provision

The Board shall accept appeals from agency actions effected prior to the effective date of this Plan. On the effective date of Part II of this Plan, proceedings then before the Federal Employee Appeals Authority shall continue before the Board; proceedings then before the Appeals Review Board and proceedings then before the United States Civil Service Commission on appeal from decisions of the Appeals Review Board shall continue before the Board; other employee appeals before boards or other bodies pursuant to law or regulation shall continue to be processed pusuant to those laws or regulations. Nothing in this section shall affect the right of a Federal employee to judicial review under applicable law.

Section 204. The Special Counsel

(a) There shall be a Special Counsel to the Board appointed for a term of four years by the President by and with the advice and consent of the Senate, who shall be compensated as now or hereafter provided for level IV of the Executive Schedule.

(b) There are hereby transferred to the Special Counsel all functions with respect to investigations relating to violations of 5 U.S.C. Chapter 15; 5 U.S.C. Subchapter III of Chapter 73 (Political Activities); and 5 U.S.C. 552(a)(4)(F) (public information).[12]

(c) The Special Counsel may investigate, pursuant to 5 U.S.C. 1303, allegations of personnel practices which are prohibited by law or regulation.[13]

(d) When in the judgment of the Special Counsel, such personnel practices exist, he shall report his findings and recommendations to the Chairman of the Merit Systems Protection Board, the agency affected, and to the Office of Personnel Management, and may report such findings to the President.

(e) When in the judgment of the Special Counsel, the results of an investigation would warrant the taking of disciplinary action against an employee who is within the jurisdiction of the Board, the Special Counsel shall prepare charges against such employee and present them with supporting documentation to the Board. Evidence supporting the need for disciplinary action against a Presidential appointee shall be submitted by the Special Counsel to the President.

(f) The Special Counsel may appoint personnel necessary to assist in the performance of his functions.

(g) The Special Counsel shall have the authority to prescribe rules and regulations relating to the receipt and investigation of matters under his jurisdiction. Such regulations shall be published in the Federal Register.

(h) The Special Counsel shall not issue advisory opinions.

PART III. FEDERAL LABOR RELATIONS AUTHORITY

Section 301. Establishment of the Federal Labor Relations Authority

(a) There is hereby established, as an independent establishment in the executive branch, the Federal Labor Relations Authority (the "Authority"). The Authority shall be composed of three members,

one of whom shall be Chairman, not more than two of whom may be adherents of the same political party, and none of whom may hold another office or position in the Government of the United States except where provided by law or by the President.

(b) Members of the Authority shall be appointed by the President, by and with the advice and consent of the Senate. The President shall designate one member to serve as Chairman of the Authority, who shall be compensated at the rate now or hereafter provided for level III of the Executive Schedule. The other members shall be compensated at the rate now or hereafter provided for level IV of the Executive Schedule.

(c) The initial members of the Authority shall be appointed as follows: one member for a term of 2 years; one member for a term of 3 years; and the Chairman for a term of 4 years. Thereafter, each member shall be appointed for a term of 4 years. An individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced.

(d) The Authority shall make an annual report on its activities to the President for transmittal to Congress.

Section 302. Establishment of the General Counsel of the Authority

There shall be a General Counsel of the Authority, who shall be appointed by the President, by and with the advice and consent of the Senate for a term of four years, and who shall be compensated at the rate now or hereafter provided for level V of the Executive Schedule. The General Counsel shall perform such duties as the Authority shall from time to time prescribe, including but not limited to the duty of determining and presenting facts required by the Authority in order to decide unfair labor practice complaints.

Section 303. The Federal Service Impasses Panel

The Federal Service Impasses Panel, established under Executive Order 11491, as amended, (the "Panel") shall continue, and shall be a distinct organizational entity within the Authority.

Section 304. Functions

Subject to the provisions of Section 306, the following functions are hereby transferred:

(a) To the Authority—

(1) The functions of the Federal Labor Relations Council pursuant to Executive Order 11491, as amended; [14]

(2) The functions of the Civil Service Commission under Sections 4(a) and 6(e) of Executive Order 11491, [15] as amended

(3) The functions of the Assistant Secretary of Labor for Labor-Management Relations, under Executive Order 11491, as amended, except for those functions related to alleged violations of the standards of conduct for labor organizations pursuant to Section 6(a)(4) of said Executive Order; and, [16]

(b) to the Panel—the functions and authorities of the Federal Service Impasses Panel, pursuant to Executive Order 11491, as amended. [17]

Section 305. Authority decisions

The decisions of the Authority on any matter within its jurisdiction shall be final and not subject to judicial review.

Section 306. Other provisions

Unless and until modified, revised, or revoked, all policies, regulations, and procedures established, and decisions issued, under Executive Order 11491, as amended, shall remain in full force and effect. There is hereby expressly reserved to the President the power to modify the functions transferred to the Federal Labor Relations Authority and the Federal Service Impasses Panel pursuant to Section 304 of this Plan.

Section 307. Savings provision

All matters which relate to the functions transferred by Section 304 of this Plan, and which are pending on the effective date of the establishment of the Authority before the Federal Labor Relations Council, the Vice Chairman of the Civil Service Commission, or the Assistant Secretary of Labor for Labor-Management Relations shall continue before the Authority under such rules and procedures as the Authority shall prescribe. All such matters pending on the effective date of the establishment of the Authority before the Panel, shall continue before the Panel under such rules and procedures as the Panel shall prescribe.

PART IV. GENERAL PROVISIONS

Section 401. Incidental transfer

So much of the personnel, property, records, and unexpended balances of appropriations, allocations and other funds employed, used, held, available, or to be made available in connection with the functions transferred under this plan, as the Director of the Office of Management and Budget shall determine, shall be transferred to the appropriate agency, or component at such time or times as the Director of the Office of Management and Budget shall provide, except that no such unexpended balances transferred shall be used for purposes other than those for which the appropriation was originally made. The Director of the Office of Management and Budget shall provide for terminating the affairs of any agencies abolished herein and for such further measures and dispositions as such Director deems necessary to effectuate the purposes of this reorganization plan.

Section 402. Interim officers

(a) The President may authorize any persons who, immediately prior to the effective date of this plan, held positions in the executive branch of the Government, to act as Director of the Office of Personnel Management, the Deputy Director of the Office of Personnel Management, the Special Counsel, the Chairman and other members of the Federal Labor Relations Authority, the Chairman and other members of the Federal Service Impasses Panel, or the General Counsel of the Authority, until those offices are for the first time filled pursuant to the provisions of this reorganization plan or by recess appointment, as the case may be.

(b) The President may authorize any such person to receive the compensation attached to the office in respect of which that person so serves, in lieu of other compensation from the United States.

Section 403. Effective date

The provisions of this reorganization plan shall become effective at such time or times, on or before January 1, 1979, as the President

shall specify, but not sooner than the earliest time allowable under section 906 of title 5, United States Code.

NOTE 1

Section 101 of Reorganization Plan No. 2 of 1978 abolishes "the position referred to in 5 U.S.C. § 5109(b)." Section 5109(b) refers to the "position held by the employee appointed under section 1104(a)(2) of this title (5 U.S.C. § 1104(a)(2)) to have such functions and duties with respect to retirement, life insurance, and health benefits programs as the Civil Service Commission may prescribe." Section 1104(a)(2) authorizes the Chairman of the Civil Service Commission to appoint an employee to have such duties and functions with respect to retirement, life insurance, and health benefits programs as the Commission may prescribe.

NOTE 2

Section 102 of the Reorganization plan transfers all functions vested by statute in the Civil Service Commission to the Director of the new Office of Personnel Management, unless otherwise specified in the Plan. The functions of the Civil Service Commission include aiding the President in preparing the rules he prescribes for administering the competitive service, 5 U.S.C. § 1301; prescribing regulations for, and controlling, supervising and preserving the records of examinations for the competitive service, 5 U.S.C. § 1302; and prescribing and enforcing rules and regulations for the administration of the provisions of title 5 and Executive orders that implement Congressional policy that preference shall be given to preference eligibles, 5 U.S.C. § 1302.

NOTE 3

Besides the statutory functions mentioned above, the Office of Management and Budget has supplied to our office a list of those principal statutory functions of the U.S. Civil Service Commission and/or its Chairman which would be transferred to the Director of the Office of Personnel Management. A copy of this list is attached to this report.

Section 102 of the Reorganization Plan also transfers to the Director of the Office of Personnel Management all of the functions vested in the Chairman of the Civil Service Commission unless otherwise provided in the Plan. Statutory authority for the appointment of the Chairman of the Civil Service Commission may be found at 5 U.S.C. § 1103. The functions of the Chairman are set out at 5 U.S.C. § 1104, and include: acting with Civil Service Commission boards of examiners to secure accuracy, uniformity and justice in their proceedings; directing and supervising activities of employees of the Commission, distributing business among employees and organizational units of the Commission; directing the internal management of the affairs of the Commission; directing the preparation of requests for appropriations and the use and expenditure of funds; executing, administering and enforcing the civil service statutes, rules, and regulations and the other activities of the Commission including retirement and classification activities; and reviewing the operations of the civil service life insurance programs.

Besides the above-mentioned functions, additional statutory functions of the Chairman of the Civil Service Commission are included in the list of principal statutory functions supplied to our office by the Office of Management and Budget and attached to this report.

NOTE 4

Section 102 of the Reorganization Plan transfers all of the functions vested by statute in the Boards of Examiners established by 5 U.S.C. § 1105 to the Director of the Office of Personnel Management, unless otherwise specified in the Plan.

Section 1105 of Title 5 provides that the Civil Service Commission shall, in the District of Columbia, and in one or more places in each State and territory or possession of the United States where examinations are to be held, designate at least three individuals in the service of the United States, to be members of Civil Service Commission boards of examiners. The board of examiners shall be located as to make it reasonably convenient and inexpensive for applicants to attend before them. Proceedings of the boards of examiners are open to the Chairman of the Commission.

NOTE 5

Section 104 of the Reorganization Plan states that the functions of the Director of the Office of Personnel Management include performing the training responsibilities now performed by the United States Civil Service Commission as set forth in 5 U.S.C. Chapter 41.

Chapter 41 of title 5 consists of sections 5 U.S.C. § 4101 through 5 U.S.C. § 4118. Section 5 U.S.C. § 4118 provides that the Civil Service Commission shall prescribe regulations containing the principles, standards, and related requirements for programs for the training of employees under Chapter 41 of Title 5, including requirements for the coordination of and reasonable uniformity in agency training programs. This section also provides that the regulations shall cover requirements concerning determination and continuing review by each agency of its training needs and requirements, the scope and conduct of the agency training programs and plans, the selection and assignment of employees for training, the use by each agency of employees who have undergone training, the evaluation and results of the training programs, the interchange of training information among the agencies, the submission of reports by the agencies on results and effects of training programs and economies resulting therefrom, and other matters considered appropriate by the Commission. In addition, the Commission is authorized by this section to prescribe regulations concerning the use of non-Government facilities for training purposes.

Section 4117 provides that the Commission has the responsibility and authority for effective promotion and coordination of the training programs, subject to the supervision and control by the President and review by the Congress.

Section 4116 provides that the Commission, at the request of an agency, shall advise and assist in the establisment, operation, and maintenance of the training programs and plans of the agency.

Section 4115 provides that the Commission, to the extent it considers it appropriate in the public interest, may collect information

concerning training programs, plans, and the methods inside and outside of the Government, and upon request, may make this information available to the agency and the public.

Section 4114 provides that the Commission shall review the operations, activities, and related transactions of each agency in connection with each agency training program by, in or through nongovernmental facilities, in order to determine compliance with the principles of Chapter 41 and the regulations prescribed under Section 4118.

Section 4113 provides that each agency shall report to the Civil Service Commission annually on its training programs.

Section 4106 provides that the Commission may prescribe limitations, in accordance with the provisions and purposes of chapter 41 concerning the time which may be spent by an employee in training, but that on recommendation of the head of an agency, the Commission may waive, with respect to that agency or part thereof, all or any of the limitations if the Commission determines that the application of the limitation is contrary to the public interest in that situation.

NOTE 6

Section 201(a) of the Reorganization Plan redesignates the Commissioners of the United States Civil Service Commission as members of the Merit Systems Protection Board.

The three Commissioners of the Civil Service Commission are appointed by the President with the advice and consent of the Senate, as provided for in 5 U.S.C. § 1101. Not more than two Commissioners may be adherents of the same political party, and none of whom may hold another office or position in the Government of the United States. The term of office of each Commissioner is six years, as provided in 5 U.S.C. § 1102. When the term of office of a Commissioner has expired, he may continue to serve until his successor is appointed and has qualified.

NOTE 7

Section 201(b) of the Reorganization Plan abolishes the position of Executive Director of the Civil Service Commission. This position is established under the authority of 5 U.S.C. § 1103(d) which provides: There is under the Chairman an Executive Director, who is appointed in the competitive service by the Chairman. During the absence or disability of all three Commissioners, or when the offices of the three Commissioners are vacant, the Executive Director shall perform the functions vested in the Chairman by section 1104 of this title [Title 5]. However, the Executive Director may not sit as a member or acting member of the Commission.

NOTE 8

Section 202(a) of the Reorganization Plan provides that there shall remain with the Merit Systems Protection Board the hearing, adjudication, and appeals functions of the United States Civil Service Commission specified in 5 U.S.C. § 1104(b)(4), except hearings, adjudications and appeals with respect to examination ratings, and also found in 5 U.S.C. §§ 1504–1507, 7325, 5335, 7521, 7701 and 8347(d), as well as 38 U.S.C. § 2023.

Section 1104(b)(4) refers to the Civil Service Commission's functions with respect to: "the hearing or providing for the hearing of appeals, including appeals with respect to examination ratings, veteran's preference, racial and religious discrimination, disciplinary action, performance ratings, and dismissals, and the taking of final action on those appeals . . .".

Sections 1504–1507 provide:

§ 1504. Investigations; notice of hearing

When a Federal agency charged with the duty of making a loan or grant of funds of the United States for use in an activity by a State or local officer or employee has reason to believe that the officer or employee has violated section 1502 of this title, it shall report the matter to the Civil Service Commission. On receipt of the report, or on receipt of other information which seems to the Commission to warrant an investigation, the Commission shall—

(1) fix a time and place for a hearing; and

(2) send, by registered or certified mail, to the officer or employee charged with the violation and to the State or local agency employing him a notice setting forth a summary of the alleged violation and giving the time and place of the hearing.

The hearing may not be held earlier than 10 days after the mailing of the notice.

§ 1505. Hearings; adjudications; notice of determinations

Either the State or local officer or employee or the State or local agency employing him, or both, are entitled to appear with counsel at the hearing under section 1504 of this title, and be heard. After this hearing, the Civil Service Commission shall—

(1) determine whether a violation of section 1502 of this title has occurred;

(2) determine whether the violation warrants the removal of the officer or employee from his office or employment; and

(3) notify the officer or employee and the agency of the determination by registered or certified mail.

§ 1506. Orders; withholding loans or grants; limitations

(a) When the Civil Service Commission finds—

(1) that a State or local officer or employee has not been removed from his office or employment within 30 days after notice of a determination by the Commission that he has violated section 1502 of this title and that the violation warrants removal; or

(2) that the State or local officer or employee has been removed and has been appointed within 18 months after his removal to an office or employment in the same State in a State or local agency which does not receive loans or grants from a Federal agency;

the Commission shall make and certify to the appropriate Federal agency an order requiring that agency to withhold from its loans or grants to the State or local agency to which notice was given an amount equal to 2 years' pay at the rate the officer or employee was receiving at the time of the violation. When the State or local agency to which appointment within 18 months after removal has been made is one that receives loans or grants from a Federal agency, the Commission order

shall direct that the withholding be made from that State or local agency.

(b) Notice of the order shall be sent by registered or certified mail to the State or local agency from which the amount is ordered to be withheld. After the order becomes final, the Federal agency to which the order is certified shall withhold the amount in accordance with the terms of the order. Except as provided by section 1508 of this title, a determination or order of the Commission becomes final at the end of 30 days after mailing the notice of the determination or order.

(c) The Commission may not require an amount to be withheld from a loan or grant pledged by a State or local agency as security for its bonds or notes if the withholding of that amount would jeopardize the payment of the principal or interest on the bonds or notes.

§ 1507. Subpenas and depositions

(a) The Civil Service Commission may require by subpena the attendance and testimony of witnesses and the production of documentary evidence relating to any matter before it as a result of this chapter. Any member of the Commission may sign subpenas, and members of the Commission and its examiners when authorized by the Commission may administer oaths, examine witnesses, and receive evidence. The attendance of witnesses and the production of documentary evidence may be required from any place in the United States at the designated place of hearing. In case of disobedience to a subpena the Commission may invoke the aid of a court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence. In case of contumacy or refusal to obey a subpena issued to a person, the United States District Court within whose jurisdiction the inquiry is carried on may issue an order requiring him to appear before the Commission, or to produce documentary evidence if so ordered, or to give evidence concerning the matter in question; and any failures to obey the order of the court may be punished by the court as a contempt thereof.

(b) The Commission may order testimony to be taken by deposition at any stage of a proceeding or investigation before it as a result of this chapter. Depositions may be taken before an individual designated by the Commission and having the power to administer oaths. Testimony shall be reduced to writing by the individual taking the deposition, or under his direction, and shall be subscribed by the deponent. Any person may be compelled to appear and depose and to produce documentary evidence before the Commission as provided by this section.

(c) A person may not be excused from attending and testifying or from producing documentary evidence or in obedience to a subpena on the ground that the testimony or evidence, documentary or otherwise required of him may tend to incriminate him or subject him to a penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled to testify, or produce evidence, documentary or otherwise, before the Commission in obedience to a subpena issued by it. A person so testifying is not exempt from prosecution and punishment for perjury committed in so testifying.

Section 7325 provides: An employee or individual who violates section 7324 of this title shall be removed from his position, and funds appropriated for the position from which removed thereafter may

not be used to pay the employee or individual. However, if the Civil Service Commission finds by unanimous vote that the violation does not warrant removal, a penalty of not less than 30 days' suspension without pay shall be imposed by direction of the Commission.

Section 5335, with relation to the appeal functions of the Civil Service Commission, provides that: When a determination is made under subsection (a) of this section that the work of an employee is not of an acceptable level of competence, the employee is entitled to prompt written notice of that determination and an opportunity for reconsideration of the determination within his agency under uniform procedures prescribed by the Commission. If the determination is affirmed on reconsideration, the employee is entitled to appeal to the Commission. If the reconsideration or appeal results in a reversal of the earlier determination, the new determination supersedes the earlier determination and is deemed to have been made as of the date of the earlier determination. The authority of the Commission to prescribe procedudes and the entitlement of the employee to appeal to the Commission do not apply to a determination of acceptable level of competence made by the Librarian of Congress.

Section 7521 provides: A hearing examiner appointed under section 3105 of this title [Title 5] may be removed by the agency in which he is employed only for good cause established and determined by the Civil Service Commission on the record and after opportunity for hearing.

Section 7701 provides:

§ 7701. Appeals of preference eligibles

A preference eligible employee as defined by section 7511 of this title is entitled to appeal to the Civil Service Commission from an adverse decision under section 7512 of this title of an administrative authority so acting. The employee shall submit the appeal in writing within a reasonable time after receipt of notice of the adverse decision, and is entitled to appear personally or through a representative under regulations prescribed by the Commission. The Commission, after investigation and consideration of the evidence submitted, shall submit its findings and recommendations to the administrative authority and shall send copies of the findings and recommendations to the appellant or his representative. The administrative authority shall take the corrective action that the Commission finally recommends.

Section 8347(d) provides: An administrative action or order affecting the rights or interests of an individual or of the United States under this subchapter [Civil Service Retirement] may be appealed to the Commission under procedures prescribed by the Commission.

Title 32, section 2023 provides:

§ 2023. Reemployment by the United States, territory, possession, or the District of Columbia

(a) Any person who is entitled to be restored to or employed in a position in accordance with the provisions of clause (A) of section 2021(a) and who was employed, immediately before entering the Armed Forces, by any agency in the executive branch of the Government or by any territory or possesssion, or political subdivision thereof, or by the District of Columbia, shall be so restored or reemployed by such agency or the successor to its functions, or by such territory, pos-

session, political subdivision, or the District of Columbia. In any case in which, upon appeal of any person who was employed, immediately before entering the Armed Forces, by any agency in the executive branch of the Government or by the District of Columbia, the United States Civil Service Commission finds that—

(1) such agency is no longer in existence and its functions have not been transferred to any other agency; or

(2) for any reason it is not feasible for such person to be restored to employment by such agency or by the District of Columbia.

the Commission shall determine whether or not there is a position in any other agency in the executive branch of the Government or in the government of the District of Columbia for which such person is qualified and which is either vacant or held by a person having a temporary appointment thereto. In any case in which the Commission determines that there is such a position, such person shall be offered employment and, if such person so requests, be employed in such position by the agency in which such position exists or by the government of the District of Columbia, as the case may be. The Commission is authorized and directed to issue regulations giving full force and effect to the provisions of this section insofar as they relate to persons entitled to be restored to or employed in positions in the executive branch of the Government or in the government of the District of Columbia, including persons entitled to be reemployed under the last sentence of subsection (b) of this section. The agencies in the executive branch of the Government and the government of the District of Columbia shall comply with such rules, regulations, and orders issued by the Commission pursuant to this subsection. The Commission is authorized and directed whenever it finds, upon appeal of the person concerned, that any agency in the executive branch of the Government or the government of the District of Columbia has failed or refuses to comply with the provisions of this section, to issue an order specifically requiring such agency or the government of the District of Columbia to comply with such provisions and to compensate such person for any loss of salary or wages suffered by reason of failure to comply with such provisions, less any amounts received by such person through other employment, unemployment compensation, or readjustment allowances. Any such compensation ordered to be paid by the Commission shall be in addition to and shall not be deemed to diminish any of the benefits provided for in such provisions, and shall be paid by the head of the agency concerned or by the government of the District of Columbia out of appropriations currently available for salary and expenses of such agency or government, and such appropriations shall be available for such purpose. As used in this chapter, the term "agency in the executive branch of the Government" means any department, independent establishment, agency, or corporation in the executive branch of the United States Government (including the United States Postal Service and the Postal Rate Commission).

(b) Any person who is entitled to be restored to or employed in a position in accordance with the provisions of clause (A) of section 2021(a), and who was employed, immediately before entering the Armed Forces, in the legislative branch of the Government, shall be so restored or employed by the officer who appointed such person to

the position which such person held immediately before entering the Armed Forces. In any case in which it is not possible for any such person to be restored to or employed in a position in the legislative branch of the Government and such person is otherwise eligible to acquire a status for transfer to a position in the competitive service in accordance with section 3304(c) of title 5, the United States Civil Service Commission shall, upon appeal of such person, determine whether or not there is a position in the executive branch of the Government for which such person is qualified and which is either vacant or held by a person having a temporary appointment thereto. In any case in which the Commission determines that there is such a position, such person shall be offered employment and, if such person so requests, be employed in such position by the agency in which such position exists.

(c) Any person who is entitled to be restored to or employed in a position in accordance with the provisions of clause (A) of section 2021(a) and who was employed, immediately before entering the Armed Forces, in the judicial branch of the Government, shall be so restored or reemployed by the officer who appointed such person to the position which such person held immediately before entering the Armed Forces.

NOTE 9

Section 202(b) of the Reorganization Plan provides that there shall remain with the Merit System Protection Board the functions vested in the Civil Service Commission or its Chairman, pursuant to 5 U.S.C. §§ 1104(a)(5) and (b)(4) to enforce decisions rendered pursuant to the authorities described in Section 202(a) of the Plan.

Section 1104(a)(5) vests with the Chairman of the Civil Service Commission the function of executing, administering, and enforcing the civil service rules and regulations of the President and the Commission and the statutes governing the same, and the other activities of the Commission including retirement and classification activties.

Section 1104(b)(4) refores to the functions of the Commission with respect to the hearings or providing for the hearings of appeals, including appeals with respect to examination ratings, veteran's preference, racial and religious discrimination, disciplinary action, preformance ratings, and dismissals, and the taking of final action on those appeals.

NOTE 10

Section 202(e) of the Reorganization Plan provides that the Merit Systems Protection Board shall designate individuals to chair performance rating boards established pursuant to 5 U.S.C. § 4305. This section provides:

§ 4305. Review of ratings

(a) An agency, on request of an employee of that agency, shall provide one impartial review of the performance rating of the employee.

(b) Each agency shall establish one or more boards of review of equal jurisdiction to consider and pass on the merits of performance ratings under rating plans established under this chapter. Each board of review shall have three members, one member designated by the

head of the agency, one member designated by the employees of the agency in the manner prescribed by the Civil Service Commission, and one member, who serves as chairman, designated by the Commission. Alternate members are designated in the same manner as their respective principals.

(c) In addition to the review under subsection (a) of this section, an employee with a current performance rating of less than satisfactory, on written appeal to the chairman of the appropriate board of review established under subsection (b) of this section, is entitled to a hearing and decision on the merits of the appealed rating. If an employee with a current performance rating of satisfactory has not requested and obtained review of the rating under subsection (a) of this section, he is entitled, on written appeal to the chairman of the appropriate board of review established under subsection (b) of this section, to a hearing and decision on the merits of the appealed rating.

(d) At the hearing the appellant, or his designated representative, and representatives of the agency are entitled to submit pertinent information orally or in writing, and to hear or examine, and reply to, information submitted by others. After the hearing, the board of review shall confirm the appealed rating or make such change as it considers proper.

NOTE 11

Section 202(f) of the Reorganization Plan provides that the Chairman of the Merit Systems Protection Board shall designate representatives to chair boards of review established pursuant to 5 U.S.C. § 3383(b). Section 3383 provides a review procedure for determinations by the Secretary of Transportation that an air traffic controller was properly removed as a controller under Section 3381(a) and is entitled to training, or who is eligible for immediate retirement, should be separated involuntarily from the service. Section 3383(b) states:

> If the Secretary (of Transportation) does not rescind his determination within 15 days after the receipt of the written request filed by the controller under subsection (a) of this section, the Secretary shall immediately convene a board of review, consisting of—
>
> (1) a person designated by the controller;
>
> (2) a representative of the Department of Transportation designated by the Secretary; and
>
> (3) a representative of the Civil Service Commission, designated by the Chairman who shall serve as chairman of the board of review.

NOTE 12

Section 204(b) of the Reorganization Plan transfers to the Special Counsel of the Merit Systems Protection Board all functions with respect to investigations relating to violations of 5 U.S.C. Chapter 15, 5 U.S.C. Subchapter III of Chapter 73, and 5 U.S.C. § 552(a)(4)(F).

Chapter 15 of Title 5 prohibits a State or local officer or employee as defined in Section 1501, from using his or her official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for office and from directly or indirectly

coercing or commanding a State or local employee to pay, lend or contribute money for political purposes. In addition Chapter 15 prohibits certain State and local employees from being candidates for elective office. Section 1504 of Chapter 15 of Title 5 authorizes the Civil Service Commission to investigate and hold hearing concerning alleged violations of these provisions.

Subchapter III of Chapter 73 of Title 5 prohibits certain Federal employees from requesting, receiving or giving to an employee, member of Congress, or an officer of a uniformed service anything of value for political purposes. Further, this subchapter prohibits certain Federal employees from using his or her official authority or influence for the purpose of interfering with or affecting the result of an election or to take part in political management or in political campaigns.

Section 552(a)(4)(F) of Title 5 provides:

(F) Whenever the court orders the production of any agency records improperly withheld from the complainant and assesses against the United States reasonable attorney fees and other litigation costs, and the court additionally issues a written finding that the circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously with respect to the withholding, the Civil Service Commission shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the officer or employee who was primarily responsible for the withholding. The Commission, after investigation and consideration of the evidence submitted, shall submit its findings and recommendations to the administrative authority of the agency concerned and shall send copies of the findings and recommendations to the officer or employee or his representative. The administrative authority shall take the corrective action that the Commission recommends.

NOTE 13

Section 204(c) of the Reorganization Plan provides that the Special Counsel may investigate, pursuant to 5 U.S.C. § 1303, allegations of personnel practices which are prohibited by law or regulations. Section 1303 states:

> The Civil Service Commission may investigate and report on matters concerning—
>
> (1) the enforcement and effect of the rules prescribed by the President under this title for the administration of the competitive service and the regulations prescribed by the Commission under section 1302(a) of this title; and
>
> (2) the action of an examiner, a board of examiners, and other employees concerning the execution of the provisions of this title that relate to the administration of the competitive service.

NOTE 14

Section 304(a)(1) of the Reorganization Plan provides that the functions of the Federal Labor Relations Council pursuant to Executive Order No. 11491, as amended, are transferred to a new body entitled the Federal Labor Relations Authority.

Executive Order No. 1149 is the legal basis for the labor relations program in the Federal sector, and is reproduced below. The functions

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of the Federal Labor Relations Council are contained primarily in sections 4, 9, 11 and 13 of this order.

Executive Order No. 11491 of Oct. 29, 1969, 34 Fed. Reg., as amended by Ex. Or. No. 11616 of Aug. 26, 1971; 36 Fed. Reg. 17319; Ex. Or. No. 11636 of Dec. 17, 1971, 36 Fed. Reg. 24901; Ex. Or. No. 11838 of Feb. 6, 1975, 40 Fed. Reg. 5743; Ex. Or. No. 12027 of Dec. 5, 1977, 42 Fed. Reg. 61851, provided:

General Provisions

Section 1. *Policy.* (a) Each employee of the executive branch of the Federal Government has the right, freely and without fear of penalty or reprisal, to form, join, and assist a labor organization or to refrain from any such activity, and each employee shall be protected in the exercise of this right. Except as otherwise expressly provided in this Order, the right to assist a labor organization extends to participation in the management of the organization and acting for the organization in the capacity of an organization representative, including presentation of its views to officials of the executive branch, the Congress, or other appropriate authority. The head of each agency shall take the action required to assure that employees in the agency are apprised of their rights under this section and that no interference, restraint, coercion, or discrimination is practiced within his agency to encourage or discourage membership in a labor organization.

(b) Paragraph (a) of this section does not authorize participation in the management of a labor organization or acting as a representative of such an organization by a supervisor, except as provided in section 24 by this Order, or by an employee when the participation or activity would result in a conflict or apparent conflict of interest or otherwise be incompatible with law or with the official duties of the employee.

Sec. 2. *Definitions.* When used in this Order, the term—

(a) "Agency" means an executive department, a Government corporation, and an independent establishment as defined in section 104 of title 5, United States Code, except the General Accounting Office;

(b) "Employee" means an employee of an agency and an employee of a nonappropriated fund instrumentality of the United States but does not include, for the purpose of exclusive recognition or national consultation rights, a supervisor, except as provided in section 24 of this Order;

(c) "Supervisor" means an employee having authority, in the interest of an agency, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of authority is not of a merely routine or clerical nature, but requires the use of independent judgment;

(d) [Revoked.]

(e) "Labor organization" means a lawful organization of any kind in which employees participate and which exists for the purpose, in whole or in part, of dealing with agencies concerning grievances, personnel policies and practices, or other matters affecting the working conditions of their employees; but does not include an organization which—

(1) consists of management officials or supervisors, except as provided in section 24 of this Order;

(2) assists or participates in a strike against the government of the United States or any agency thereof, or imposes a duty or obligation to conduct, assist, or participate in such a strike;

(3) advocates the overthrow of the constitutional form of government in the United States; or

(4) discriminates with regard to the terms or conditions of membership because of race, color, creed, sex, age, or national origin;

(f) "Agency management" means the agency head and all management officials, supervisors, and other representatives of management having authority to act for the agency on any matters relating to the implementation of the agency labor-management relations program established under this Order;

(g) "Council" means the Federal Labor Relations Council established by this Order;

(h) "Panel" means the Federal Service Impasses Panel established by this Order; and

(i) "Assistant Secretary" means the Assistant Secretary of Labor for Labor-Management Relations.

Sec. 3. *Application.* (a) This Order applies to all employees and agencies in the executive branch, except as provided in paragraphs (b), (c) and (d) of this section.

(b) This Order (except section 22) does not apply to—

(1) the Federal Bureau of Investigation;

(2) The Central Intelligence Agency;

(3) any other agency, or office, bureau, or entity within an agency, which has as a primary function intelligence, investigative, or security work, when the head of the agency determines, in his sole judgment, that the Order cannot be applied in a manner consistent with national security requirements and considerations; or

(4) any office, bureau or entity within an agency which has as a primary function investigation or audit of the conduct or work of official or employees of the agency for the purpose of ensuring honesty and integrity in the discharge of their official duties, when the head of the agency determines, in his sole judgment, that the Order cannot be applied in a manner consistent with the internal security of the agency.

(5) The Foreign Service of the United States: Department of State, United States Information Agency and Agency for International Development and its successor agency or agencies.

(c) The head of an agency may, in his sole judgment, suspend any provision of this Order (except section 22) with respect to any agency installation or activity located outside the United States, when he determines that this is necessary in the national interest, subject to the conditions he prescribes.

(d) Employees engaged in administering a labor-management relations law or this Order shall not be represented by a labor organization which also represents other groups of employees under the law or this Order, or which is affiliated directly or indirectly with an organization which represents such a group of employees.

ADMINISTRATION

SEC. 4. *Federal Labor Relations Council.* (a) There is hereby established the Federal Labor Relations Council, which consists of the Chairman of the Civil Service Commission, who shall be chairman of the Civil Service Commission, who shall be chairman of the Council, the Secretary of Labor, the Director of the Office of Management and Budget, and such other officials of the executive branch as the President may designate from time to time. The Civil Service Commission shall provide administrative support and services to the Council to the extent authorized by law.

(b) The Council shall administer and interpret this Order, decide major policy issues, prescribe regulations, and from time to time, report and make recommendations to the President.

(c) The Council may consider, subjects to its regulations—

(1) appeals from decisions of the Assistant Secretary issued pursuant to section 6 of this order, except where, in carrying out his authority under section 11(d), he makes a negotiability determination, in which instance the party adversely affected shall have a right of appeal;

(2) appeals on negotiability issues as provided in section 11(c) of this Order.

(3) decide questions as to the eligibility of labor organizations

(4) other matters it deems appropriate to assure the effectuation of the purposes of this Order.

SEC. 5. *Federal Service Impasses Panel.* (a) There is hereby established the Federal Service Impasses Panel as an agency within the Council. The Panel consists of at least three members appointed by the President, one of whom he designates as chairman. The Council shall provide the services and staff assistance needed by the Panel.

(b) The Panel may consider negotiation impasses as provided in section 17 of this Order and may take any action it considers necessary to settle an impasse.

(c) The Panel shall prescribe regulations needed to administer its function under this Order.

SEC. 6. *Assistant Secretary of Labor for Labor-Management Relations.*

(a) The Assistant Secretary shall—

(1) decide questions as to the appropriate unit for the purpose of exclusive recognition and related issues submitted for his consideration;

(2) supervise elections to determine whether a labor organization is the choice of a majority of the employees in an appropriate unit as their exclusive representative, and certify the results;

(3) decide questions as to the eligibility of labor organizations for national consultation rights under criteria prescribed by the Council;

(4) decide unfair labor practice complaints (including those where an alleged unilateral act by one of the parties requires an initial negotiability determination) and alleged violations of the standards of conduct for labor organizations; and

(5) decide questions as to whether a grievance is subject to a negotiated grievance procedure or subject to arbitration under an agreement as provided in section 13(d) of this order.

(b) In any matters arising under paragraph (a) of this section, the Assistant Secretary may require an agency or a labor organization to cease and desist from violations of this Order and require it to take such affirmative action as he considers appropriate to effectuate the policies of this Order.

(c) In performing the duties imposed on him by this section, the Assistant Secretary may request and use the services and assistance of employees of other agencies in accordance with section 1 of the Act of March 4, 1915 (38 Stat. 1084, as amended; 31 U.S.C. § 686).

(d) The Assistant Secretary shall prescribe regulations needed to administer his functions under this Order.

(e) If any matters arising under paragraph (a) of this section involve the Department of Labor, the duties of the Assistant Secretary described in paragraphs (a) and (b) of this section shall be performed by a member of the Civil Service Commission designated by the Chairman of the Commission.

Recognition

Sec. 7. *Recognition in general.* (a) An agency shall accord exclusive recognition or national consultation rights at the request of a labor organization which meets the requirements for the recognition or consulation rights under this Order.

(b) A labor organization seeking recognition shall submit to the agency a roster of its officers and representatives, a copy of its constitution and by-laws, and a statement of its objectives.

(c) When recognition of a labor organization has been accorded, the recognition continues as long as the organization continues to meet the requirements of this Order applicable to that recognition, except that this section does not require an election to determine whether an organization should become, or continue to be recognized as, exclusive representative of the employees in any unit or subdivision thereof within 12 months after a prior valid election with respect to such unit.

(d) Recognition of a labor organization does not—

(1) preclude an employee, regardless of whether he is in a unit of exclusive recognition, from exercising grievance or appellate rights established by law or regulation, or from choosing his own representative in a grievance or appellate action, except when the grievance is covered under a negotiated procedure as provided in section 13;

(2) preclude or restrict consultations and dealings between an agency and a veterans organization with respect to matters of particular interest to employees with veterans preference; or

(3) preclude an agency from consulting or dealing with a religious, social, fraternal, professional or other lawful association, not qualified as a labor organization, with respect to matters or policies which involve individual members of the association or are of particular applicability to it or its members. Consultations and dealings under subparagraph (3) of this paragraph shall be so limited that they do not assume the character of formal consultation on matters of general employee-management policy covering employees in that unit or extend to areas where recognition of the interests of one employee group may result in discrimination against or injury to the interests of other employees.

(e) [Revoked.]

(f) Informal recognition or formal recognition shall not be accorded.

Sec. 8. *Formal Recognition.* [Revoked.]

Sec. 9. *National consultation rights.* (a) An agency shall accord national consultation rights to a labor organization which qualifies under criteria established by the Federal Labor Relations Council as the representative of a substantial number of employees of the agency. National consultation rights shall not be accorded for any unit where a labor organization already holds exclusive recognition at the national level for that unit. The granting of national consultation rights does not preclude an agency from appropriate dealings at the national level with other organizations on matter affecting their members. An agency shall terminate national consultation rights when the labor organization ceases to qualify under the established criteria.

(b) When a labor organization has been accorded national consultation rights, the agency, through appropriate officials, shall notify representatives of the organization of proposed substantive changes in personnel policies that affect employees it represents and provide an opportunity for the organization to comment on the proposed changes. The labor organization may suggest changes in the agency's personnel policies and have its views carefully considered. It may consult in person at reasonable times, on request, with appropriate officials on personnel policy matters, and at all times present its views thereon in writing. An agency is not required to consult with a labor organization on any matter on which it would not be required to meet and confer if the organization were entitled to exclusive recognition.

(c) Questions as to the eligibility of labor organizations for national consultation rights may be referred to the Assistant Secretary for decision.

Sec. 10. *Exclusive recognition.* (a) An agency shall accord exclusive recognition to a labor organization when the organization has been selected, in a secret ballot election, by a majority of the employees in an appropriate unit as their representative; provided that this section shall not preclude an agency from according exclusive recognition to a labor organization, without an election, where the appropriate unit is established through the consolidation of existing exclusively recognized units represented by that organization.

(b) A unit may be established on a plant or installation, craft, functional, or other basis which will ensure a clear and identifiable community of interest among the employees concerned and will promote effective dealings and efficiency of agency operations. A unit shall not be established solely on the basis of the extent to which employees in the proposed unit have organized, nor shall a unit be established if it includes—

(1) any management official or supervisor, except as provided in section 24;

(2) an employee engaged in Federal personnel work in other than a purely clerical capacity; or

(3) [Revoked.]

(4) both professional and nonprofessional employees, unless a majority of the professional employees vote for inclusion in the unit. Questions as to the appropriate unit and related issues may be referred to the Assistant Secretary for decision.

(c) [Revoked.]

(d) All elections shall be conducted under the supervision of the Assistant Secretary, or persons designated by him, and shall be by secret ballot. Each employee eligible to vote shall be provided the opportunity to choose the labor organization he wishes to represent him, from among those on the ballot, or "no union", except as provided in subparagraph (4) of this paragraph. Elections may be held to determine whether—

(1) a labor organization should be recognized as the exclusive representative of employees in a unit;

(2) a labor organization should replace another labor organization as the exclusive representative;

(3) a labor organization should cease to be the exclusive representative; or

(4) a labor organization should be recognized as the exclusive representative of employees in a unit composed of employees in units currently represented by that labor organization or continue to be recognized in the existing separate units.

(e) When a labor organization has been accorded exclusive recognition, it is the exclusive representative of employees in the unit and is entitled to act for and negotiate agreements covering all employees in the unit. It is responsible for representing the interests of all employees in the unit without discrimination and without regard to labor organization membership. The labor organization shall be given the opportunity to be represented at formal discussions between management and employees or employee representatives concerning grievances, personnel policies and practices, or other matters affecting general working conditions of employees in the unit.

Agreements

Sec. 11. *Negotiation of agreements.* (a) An agency and a labor organization that has been accorded exclusive recognition, through appropriate represenatives, shall meet at reasonable times and confer in good faith with respect to personnel policies and practices and matters affecting working conditions, so far as may be appropriate under applicable laws and regulations, including policies set forth in the Federal Personnel Manual; published agency policies and regulations for which a compelling need exists under criteria established by the Federal Labor Relations Council and which are issued at the agency headquarters level or at the level of a primary national subdivision; a national or other controlling agreement at a higher level in the agency; and this order. They may negotiate an agreement, or any question arising thereunder; determine appropriate techniques, consistent with section 17 of this order, to assist in such negotiation; and execute a written agreement or memorandum of understanding.

(b) In prescribing regulations relating to personnel policies and practices and working conditions, any agency shall have due regard for the obligation imposed by paragraph (a) of this section. However, the obligation to meet and confer does not include matters with respect to the mission of an agency; its budget; its organization; the number of employees; and the numbers, types, and grades of positions or employees assigned to an organizational unit, work project or tour of duty; the technology of performing its work; or its internal secu-

rity practices. This does not preclude the parties from negotiating agreements providing appropriate arrangements for employees adversely affected by the impact of realignment of work forces or technological change.

(c) If, in connection with negotiations, an issue develops as to whether a proposal is contrary to law, regulation, controlling agreement, or this order and therefore not negotiable, it shall be resolved as follows:

(1) An issue which involves interpretation of a controlling agreement at a higher agency level is resolved under the procedures of the controlling agreement, or, if none, under agency regulations;

(2) An issue other than as described in subparagraph (1) of this paragraph which arises at a local level may be referred by either party to the head of the agency for determination;

(3) An agency head's determination as to the interpretation of the agency's regulations with respect to a proposal is final;

(4) A labor organization may appeal to the Council for a decision when—

(i) it disagrees with an agency head's determination that a proposal would violate applicable law, regulation of appropriate authority outside the agency, or this order, or

(ii) it believes that an agency's reglulations, as interpreted by the agency head, violate applicable law, regulation of appropriate authority outside the agency, or this order, or are not otherwise applicable to bar negotiations under paragraph (a) of this section.

(d) If, as the result of an alleged unilateral change in, or addition, to, personnel policies and practices or matters affecting working conditions, the acting party is charged with a refusal to consult, confer or negotiate as required under this order, the Assistant Secretary may, in the exercise of his authority under section 6(a)(4) of the order, make those determinations of negotiability as may be necessary to resolve the merits of the alleged unfair labor practice. In such cases the party subject to an adverse ruling may appeal the Assistant Secretary's negotiability determination to the Council.

Sec. 12. *Basic provisions of agreements.* Each agreement between an agency and a labor organization is subject to the following requirements—

(a) in the administration of all matters covered by the agreement, officials and employees are governed by existing or future laws and the regulations of appropriate authorities, including policies set forth in the Federal Personnel Manual; by published agency policies and regulations in existence at the time the agreement was approved; and by subsequently published agency policies and regulations required by law or by the regulations of appropriate authorities, or authorized by the terms of a controlling agreement at a higher agency level;

(b) management officials of the agency retain the right, in accordance with applicable laws and regulations—

(1) to direct employees of the agency;

(2) to hire, promote, transfer, asign, and retain employees in positions within the agency, and to suspend, demote, discharge, or take other disciplinary action against employees;

(3) to relieve employees from duties because of lack of work or for other legitimate reasons;

(4) to maintain the efficiency of the Government operations entrusted to them;

(5) to determine the methods, means, and personnel by which such operations are to be conducted; and

(6) to take whatever actions may be necessary to carry out the mission of the agency in situations of emergency; and

(c) nothing in the agreement shall require an employee to become or to remain a member of a labor organization, or to pay money to the organization except pursuant to a voluntary, written authorization by a member for the payment of dues through payroll deductions.

The requirements of this section shall be expressly stated in the initial or basic agreement and apply to all supplemental, implementing, subsidiary, or informal agreements between the agency and the organization.

SEC. 13. *Grievance and arbitration procedures.* (a) An agreement between an agency and a labor organization shall provide a procedure, applicable only to the unit, for the consideration of grievances. The coverage and scope of the procedure shall be negotiated by the parties to the agreement with the exception that it may not cover matters for which a statutory appeal procedure exists and so long as it does not otherwise conflict with statute or this order. It shall be the exclusive procedure available to the parties and the employees in the unit for resolving grievances which fall within its coverage. However, any employee or group of employees in the unit may present such grievances to the agency and have them adjusted, without the intervention of the exclusive representative, as long as the adjustment is not inconsistent with the terms of the agreement and the exclusive representative has been given opportunity to be present at the adjustment.

(b) A negotiated procedure may provide for arbitration of grievances. Arbitration may be invoked only by the agency or the exclusive representative. Either party may file exceptions to an arbitrator's award with the Council, under regulations prescribed by the Council.

(c) [Revoked.]

(d) Questions that cannot be resolved by the parties as to whether or not a grievance is on a matter for which a statutory appeal procedure exists, shall be referred to the Assistant Secretary for decision. Other questions as to whether or not a grievance is on a matter subject to the grievance procedure in an existing agreement, or is subject to arbitration under that agreement, may by agreement of the parties be submitted to arbitration or may be referred to the Assistant Secretary for decision.

(e) [Revoked.]

SEC. 14. *Arbitration of grievances.* [Revoked.]

SEC. 15. *Approval of agreements.* An agreement with a labor organization as the exclusive representative of employees in a unit is subject to the approval of the head of the agency or an official designated by him. An agreement shall be approved within forty-five days from the date of its execution if it conforms to applicable laws, the order, existing published agency policies and regulations (unless the agency has granted an exception to a policy or regulation) and regulations of other appropriate authorities. An agreement which has not been ap-

proved or disapproved within forty-five days from the date of its execution shall go into effect without the required approval of the agency head and shall be binding on the parties subject to the provisions of law, the order and the regulations of appropriate authorities outside the agency. A local agreement subject to a national or other controlling agreement at a higher level shall be approved under the procedures of the controlling agreement, or, if none, under agency regulations.

Negotiation Disputes and Impasses

Sec. 16. *Negotiation disputes.* The Federal Mediation and Conciliation Service shall provide services and assistance to Federal agencies and labor organizations in the resolution of negotiation disputes. The Service shall determine under what circumstances and in what manner it shall proffer its services.

Sec. 17. *Negotiation impasses.* When voluntary arrangements, including the services of the Federal Mediation and Conciliation Service or other third-party mediation, fail to resolve a negotiation impasse, either party may request the Federal Service Impasses Panel to consider the matter. The Panel, in its discretion and under the regulations it prescribes, may consider the matter and may recommend procedures to the parties for the resolution of the impasse of may settle the impasse by appropriate action. Arbitration or third-party fact finding with recommendations to assist in the resolution of an impasse may be used by the parties only when authorized or directed by the Panel.

Conduct of Labor Organizations and Management

Sec. 18. *Standards of conduct for labor organizations.*

(a) An agency shall accord recognition only to a labor organization that is free from corrupt influences and influences opposed to basic democratic principles. Except as provided in paragraph (b) of this section, an organization is not required to prove that it has the required freedom when it is subject to governing requirements adopted by the organization or by a national or international labor organization or federation of labor organizations with which it is affiliated or in which it participates, containing explicit and detailed provisions to which it subscribes calling for—

(1) the maintenance of democratic procedures and practices, including provisions for periodic elections to be conducted subject to recognized safeguards and provisions defining and securing the right of individual members to participation in the affairs of the organization, to fair and equal treatment under the governing rules of the organization, and to fair process in disciplinary proceedings;

(2) the exclusion from office in the organization of persons affiliated with Communist or other totalitarian movements and persons identified with corrupt influences;

(3) the prohibition of business or financial interests on the part of organization officers and agents which conflict with their duty to the organization and its members; and

(4) the maintenance of fiscal integrity in the conduct of the affairs of the organization, including provision for accounting and financial controls and regular financial reports or summaries to be made available to members.

(b) Notwithstanding the fact that a labor organization has adopted or subscribed to standards of conduct as provided in paragraph (a) of this section, the organization is required to furnish evidence of its freedom from corrupt influences or influences opposed to basic democratic principles when there is reasonable cause to believe that—

(1) the organization has been suspended or expelled from or is subject to other sanction by a parent labor organization or federation of organizations with which it had been affiliated because it has demonstrated an unwillingness or inability to comply with governing requirements comparable in purpose to those required by paragraph (a) of this section; or

(2) the organization is in fact subject to influences that would preclude recognition under this Order.

(c) A labor organization which has or seeks recognition as a representative of employees under this Order shall file a financial and other reports, provide for bonding of officials and employees of the organization, and comply with trusteeship and election standards.

(d) The Assistant Secretary shall prescribe the regulations needed to effectuate this section. These regulations shall conform generally to the principles applied to unions in the private sector. Complaints of violations of this section shall be filed with the Assistant Secretary.

Sec. 19. *Unfair labor practices.* (a) Agency management shall not—

(1) interfere with, restrain, or coerce an employee in the exercise of the rights assured by this Order;

(2) encourage or discourage membership in a labor organization by discrimination in regard to hiring, tenure, promotion, or other conditions of employment;

(3) sponsor, control, or otherwise assist a labor organization, except that an agency may furnish customary and routine services and facilities under section 23 of this Order when consistent with the best interests of the agency, its employees, and the organization, and when the services and facilities are furnished, if requested, on an impartial basis to organizations having equivalent status;

(4) discipline or otherwise discriminate against an employee because he has filed a complaint or given testimony under this Order;

(5) refuse to accord appropriate recognition to a labor organization qualified for such recognition; or

(6) refuse to consult, confer, or negotiate with a labor organization as required by this Order.

(b) A labor organization shall not—

(1) interfere with, restrain, or coerce an employee in the exercise of his rights assured by this Order;

(2) attempt to induce agency management to coerce an employee in the exercise of his rights under this Order;

(3) coerce, attempt to coerce, or discipline, fine, or take other economic sanction against a member of the organization as punishment or reprisal for, or for the purpose of hindering or impeding his work performance, his productivity, or the discharge of his duties owed as an officer or employee of the United States;

(4) call or engage in a strike, work stoppage, or slowdown; picket an agency in a labor-management dispute; or condone any

such activity by failing to take affirmative action to prevent or stop it;

(5) discriminate against an employee with regard to the terms or conditions of membership because of race, color, creed, sex, age, or national origin, or

(6) refuse to consult, confer, or negotiate with an agency as required by this Order.

(c) A labor organization which is accorded exclusive recognition shall not deny membership to any employee in the appropriate unit except for failure to meet reasonable occupational standards uniformly required for admission, or for failure to tender initiation fees and dues uniformly required as a condition of acquiring and retaining membership. This paragraph does not preclude a labor organization from enforcing discipline in accordance with procedures under its constitution or by-laws which conform to the requirements of this Order.

(d) Issues which can properly be raised under an appeals procedure may not be raised under this section. Issues which can be raised under a grievance procedure may, in the discretion of the aggrieved party, be raised under that procedure or the complaint procedure under this section, but not under both procedures. Appeals or grievance decisions shall not be construed as unfair labor practice decisions under this Order nor as precedent for such decisions. All complaints under this section that cannot be resolved by the parties shall be filed with the Assistant Secretary.

Miscellaneous Provisions

Sec. 20. *Use of official time.* Solicitation of membership or dues, and other internal business of a labor organization, shall be conducted during the non-duty hours of the employees concerned. Employees who represent a recognized labor organization shall not be on official time when negotiating an agreement with agency management, except to the extent that the negotiating parties agree to other arrangements which may provide that the agency will either authorize official time for up to 40 hours or authorize up to one-half the time spent in negotiations during regular working hours, for a reasonable number of employees, which number normally shall not exceed the number of management representatives.

Sec. 21. *Allotment of dues.* (a) When a labor organization holds exclusive recognition, and the agency and the organization agree in writing to this course of action, an agency may deduct the regular and periodic dues of the organization from the pay of members of the organization in the unit of recognition who make a voluntary allotment for that purpose. Such an allotment is subject to the regulations of the Civil Service Commission, which shall include provision for the employee to revoke his authorization at stated six-month intervals. Such an allotment terminates when—

(1) the dues withholding agreement between the agency and the labor organization is terminated or ceases to be applicable to the employee; or

(2) the employee has been suspended or expelled from the labor organization.

(b) [Revoked.]

Sec. 22. *Adverse action appeals.* The head of each agency, in accordance with the provisions of this Order and regulations pre-

scribed by the Civil Service Commission, shall extend to all employees in the competitive civil service rights identical in adverse action cases to those provided preference eligibles under sections 7511–7512 of title 5 of the United States Code. Each employee in the competitive service shall have the right to appeal to the Civil Service Commission from an adverse decision of the administrative officer so acting, such appeal to be processed in an identical manner to that provided for appeals under section 7701 of title 5 of the United States Code. Any recommendation by the Civil Service Commission submitted to the head of an agency on the basis of an appeal by an employee in the competitive service shall be complied with by the head of the agency.

Sec. 23. *Agency implementation.* No later than April 1, 1970, each agency shall issue appropriate policies and regulations consistent with this Order for its implementation. This includes but is not limited to a clear statement of the rights of its employees under this Order; procedures with respect to recognition of labor organizations, determination of appropriate units, consultation and negotiation with labor organizations, approval of agreements, mediation, and impasse resolution; policies with respect to the use of agency facilities by labor organizations; and policies and practices regarding consultation with other organizations and associations and individual employees. Insofar as practicable, agencies shall consult with representatives of labor organizations in the formulation of these policies and regulations.

Sec. 24. *Savings clauses.* This Order does not preclude—

(1) the renewal or continuation of a lawful agreement between an agency and a representative of its employees entered into before the effective date of Executive Order No. 10988 (January 17, 1962); or

(2) the renewal, continuation, or initial according of recognition for units of management officials or supervisors represented by labor organizations which historically or traditionally represent the management officials or supervisors in private industry and which hold exclusive recognition for units of such officials or supervisors in any agency on the date of this Order.

Sec. 25. *Guidance, training, review and information.* (a) The Civil Service Commission, in conjunction with the Office of Management and Budget, shall establish and maintain a program for the policy guidance of agencies on labor-management relations in the Federal service and shall periodically review the implementation of these policies. The Civil Service Commission shall be responsible for the day-to-day policy guidance under that program. The Civil Service Commission also shall continuously review the operation of the Federal labor-management relations program to assist in assuring adherence to its provisions and merit system requirements; implement technical advice and information programs for the agencies; assist in the development of programs for training agency personnel and management officials in labor-management relations; and, from time to time, report to the Council on the state of the program with any recommendations for its improvement.

(b) The Department of Labor and the Civil Service Commission shall develop programs for the collection and dissemination of information appropriate to the needs of agencies, organizations and the public.

Sec. 26. *Effective date.* This Order is effective on January 1, 1970 except sections 7(f) and 8 which are effective immediately. Effective

January 1, 1970, Executive Order No. 10988 and the President's Memorandum of May 21, 1963, entitled Standards of Conduct for Employee Organizations and Code of Fair Labor Practices, are revoked.

Effective date of amendments made by Ex. Or. No. 11838 to Ex. Or. No. 11491 [set out as note to this section, supra]. Ex. Or. 11838 of Feb. 6, 1975, 40 Fed. Reg. 5743, provided, in part, "The amendments made by this order shall become effective ninety days from this date except that the amendments to sections 11(a) and 11(c) shall not become effective until ninety days after issuance by the Federal Labor Relations Council of the criteria for determining compelling need. Each agency shall issue appropriate policies and regulations consistent with this order for its implementation."

NOTE 15

Section 303(a)(2) of the Reorganization Plan provides that the functions of the Civil Service Commission under Sections 4(a) and 6(e) of Executive Order No. 11491, as amended, are to be transferred to the Federal Labor Relations Authority. See note 14 for a copy of the entire Executive Order.

NOTE 16

Section 303(a)(3) of the Reorganization Plan provides that the functions of the Assistant Secretary of Labor for Labor-Management Relations, under Executive Order 11491, as amended, except for those functions related to alleged violations of the standards of conduct for labor organizations pursuant to Section 6(a)(4) of the Executive Order, are transferred to the Federal Labor Relations Authority. The functions of the Assistant Secretary are set out in Sections 6, 10, 11, 13 and 18 of the Executive Order. See note 14 for a copy of the complete Executive Order.

NOTE 17

Section 303(b) of the Reorganization Plan provides that the functions and authorities of the Federal Services Impasses Panel, pursuant to Executive Order No. 11491, as amended, are transferred to the Federal Labor Relations Authority. These functions are set out in sections 5 and 17 of the Executive Order. See note 14 for a copy of the complete Executive Order.

Principal Statutory Functions of the United States Civil Service Commission and/or its Chairman Transferred to the Director of the Office of Personnel Management!

A. LIST OF PRINCIPAL TITLE 5, UNITED STATES CODE, FUNCTIONS TRANSFERRED TO THE OFFICE OF PERSONNEL MANAGEMENT

Chapter 5 of title 5, United States Code: Pertaining to the release of public information and other matters of administrative procedure, with the exception of 5 U.S.C. 552(a)(4)(F) pertaining to investigations of improper withholding of information reserved to the Special Counsel.

5 U.S.C. 1104: Pertaining to the functions of the Chairman of the Civil Service Commission with the exception of 1104(b)(3) which will be reserved to the Special Counsel and 1104(b)(4) (but including

appeals with respect to examination ratings), which will be retained by the Merit Systems Protection Board.

5 U.S.C. 1105: Pertaining to the functions of the Board of Examiners.

Chapter 13 of title 5, United States Code: Pertaining to the special authorities of the Commission such as preparing rules and regulations to aid the President in the administration of the competitive service, including all sections except 5 U.S.C. 1303 pertaining to the investigation of violations of rules and regulations of the civil service which is reserved to the Special Counsel.

5 U.S.C. 2951: Pertaining to the making of annual reports to the Commission for submission to Congress.

5. U.S.C. 3110(d): Pertaining to prescribing regulations for the employment of relatives in emergency situations.

Chapter 33 of title 5, United States Code: Pertaining to examination, selection and placement of employees in general, which have been specifically charged to the Commission with the exception of 5 U.S.C. 3383(b) pertaining to the designation by the Chairman of the Civil Service Commission of the chairman of boards of review in air traffic controller separation cases, which function will be retained by the Merit Systems Protection Board.

Chapter 35 of title 5, United States Code: Pertaining to retention preference, restoration, and reemployment of Federal employees.

Chapter 41 of title 5, United States Code: Pertaining to employee training.

Chapter 43 of title 5, United States Code: Pertaining to employee performance ratings, with the exception of 5 U.S.C. 4305(b) which pertains to designating individuals to serve as chairmen of performance rating boards which responsibility will remain with the Merit Systems Protection Board.

Chapter 45 of title 5, United States Code: Pertaining to the granting of incentive awards.

Chapter 51 of title 5, United States Code: Pertaining to employee classification with the exception of 5 U.S.C. 5109(b) which position is abolished by the Plan.

Chapter 53 of title 5, United States Code: Pertaining to pay rates and systems, except that hearing, adjudication, and appeals authority of the Commission under 5 U.S.C. 5335 remains with the Merit Systems Protection Board.

Chapter 55 of title 5, United States Code: Pertaining to pay administration.

Chapter 57 of title 5, United States Code: Pertaining to travel, transportation and subsistence expenses.

Chapter 61 of title 5, United States Code, section 6101–6106: Pertaining to hours of work of employees.

Chapter 63 of title 5, United States Code: Pertaining to annual and sick leave.

5 U.S.C. 7154(c): Pertaining to prescribing regulations for the administration of 5 U.S.C. 7154(b) prohibiting discrimination in employment.

Chapter 73 of title 5, United States Code: Pertaining to the prohibition of certain political activities, with the exception of 5 U.S.C. 7325 pertaining to the prescription of penalties reserved to the Merit

Systems Protection Board, and Subchapter III relating to the investigation of prohibited political activities which is reserved for the Special Counsel.

Chapter 75 of title 5, United States Code: Pertaining to adverse actions in the competitive service, with regard to preference eligibles, and in matters concerning national security, with the exception of section 7521 pertaining to the removal of hearing examiners which function will be retained by the Merit Systems Protection Board.

Chapter 83 of title 5, United States Code: Pertaining to civil service retirement and the forfeiture of annuities and retired pay with the exception of section 8347(d) concerning appeals from administrative actions or orders affecting the rights or interests of individuals with regard to annuities which remain with the Merit System Protection Board.

Chapter 87 of title 5, United States Code: Pertaining to life insurance plans.

Chapter 89 of title 5, United States Code: Pertaining to health insurance programs.

B. LIST OF OTHER UNITED STATES CODE FUNCTIONS TRANSFERRED TO THE OFFICE OF PERSONNEL MANAGEMENT

10 U.S.C. 1581 and 1582: Provides for Commission approval of compensation and qualifications of Public Law 80–313 type of professional and scientific personnel in the Department of Defense.

21 U.S.C. 1180: Requires Commission to be responsible for developing and maintaining appropriate prevention, treatment, and rehabilitation programs and services for drug abuse among Federal civilian employees.

22 U.S.C. 1434, 2519 and 2585: Provides Commission authority to conduct investigations of personnel for U.S. Information Agency, Peace Corps, and Arms Control and Disarmament Agency.

22 U.S.C. 2025(b): Provides for retirement and insurance coverage of certain persons joining International Atomic Energy Agency.

29 U.S.C. 202–218: Authorizes the Commission to administer the Fair Labor Standards Act with respect to Federal employees, except for such functions relating to equal pay administration and enforcement transferred from the Commission by Reorganization Plan No. 1 of 1978.

33 U.S.C. 771–775: Directs the Commission to regulate the payment of annuities to widows of light house service personnel.

38 U.S.C. 2014: Directs the Commission to promulgate regulations for employment of Vietnam veterans and disabled Vietnam veterans, review agency implementation, and report to Congress.

38 U.S.C. 2023: Provides reemployment rights to veterans in Federal agencies to be administered by the Commission.

39 U.S.C. 1005: Makes certain Federal personnel laws applicable to the Postal Service.

40 U.S.C. 491: Directs the Commission under subsection (j) to regulate civilian personnel operation of Government-owned motor vehicles for official purposes, including standards of physical fitness and State and local licensing.

42 U.S.C. 210(g): Provides for Commission approval of compensation and qualifications of Public Law 80–313 type professional and scientific personnel in the Public Health Service.

42 U.S.C. 1874(c): Provides Commission authority to conduct investigations of personnel for National Science Foundation.

42 U.S.C. 1973d–1973g: Directs the Commission to appoint voting examiners and assign them to any political subdivision requested by the Attorney General and appoint hearing officers to hear challenges on listings on eligibility lists prepared by examiners.

42 U.S.C. 2165: Provides Commission authority to conduct investigations of contractors, contract employees, and licensees under Atomic Energy Act of 1950.

42 U.S.C. 2455: Provides Commission authority to conduct investigations of personnel for NASA.

42 U.S.C. 2943: Directs the Commission to consult with the Director of the Community Services Administration on violations of political activity provisions by community action agencies.

42 U.S.C. 4561: Authorizes Commission to develop and maintain programs for alcohol abuse and alcoholism.

42 U.S.C. 4721–4772: Authorizes the Commission to administer the Intergovernmental Personnel Act, including making grants to State and local governments, advising Federal agencies and State and local governments on the provisions of the Act, and providing for training programs in personnel management.

49 U.S.C. 1343(f): Provides for Commission approval of compensation and qualifications of Public Law 80–313 type professional and scientific personnel in FAA.

50 U.S.C. 403: Directs Commission to declare eligibility for Federal employment of individuals terminated from employment by the Central Intelligence Agency.

50 U.S.C. 2160: Directs the Commission under subsection (b)(7) to survey emergency appointments under the Defense Production Act and report findings to the President and the Joint Committee on Defense Production.

C. LIST OF FUNCTIONS FOUND IN STATUTES AT LARGE TRANSFERRED TO THE OFFICE OF PERSONNEL MANAGEMENT

63 Stat. 475 (Public Law 81–180): Gives Commission certain responsibilities involving Canal Zone and Alaska railroad retirement and disability funds.

65 Stat. 757 as amended by 66 Stat. 122, 68 Stat. 1115, 76 Stat. 858, 79 Stat. 448, and 81 Stat. 274 (Section 1310 of Public Law 253 of the 82nd Congress—The Whitten Amendment): Request the Commission to facilitate agency transfers to defense activities and prevent excessively rapid promotions.

72 Stat. 87 (Public Law 85–377): Authorizes payment from employees life insurance fund expenses incurred by Commission in making certain beneficial assumption agreements.

74 Stat. 849 (Public Law 86–724): Provides for Commission administration of Retired Federal Employees Health Benefit Act.

85 Stat. 743 (Public Law 92–210): Provides for Commission approval of classification, qualifications, and appointing authority for certain positions during the duration of exercise of functions under the Economic Stabilization Act.

86 Stat. 103 (Public Law 92–261): Provides for Commission approval of classification, qualifications, and appointing authority for certain positions in EEOC.

86 Stat. 235 (Public Law 92–318): Provides for Commission approval of classification, qualifications, and appointing authority for certain positions in HEW.

87 Stat. 404, 408 (Public Law 93–113): Provides that Director of ACTION shall confer with Commission prior to issuing rules and regulations concerning political activities.

87 Stat. 823 (Public Law 93–198): Section 734 of the District of Columbia Self-Government and Governmental Reorganization Act authorizes the Commission to advise the D.C. Government in developing a merit system and to enter into agreements to make its registers available.

88 Stat. 126 (Public Law 93–282): Provides for Commission approval of classification and qualifications of certain positions in HEW.

88 Stat. 484 (Public Law 93–380): Provides for Commission approval of classification, qualifications, and appointing authority for certain positions in HEW.

88 Stat. 1617 (Public Law 93–516): Provides for Commission approval of classification, qualifications, and appointing authority for a position in HEW.

90 Stat. 241 (Public Law 94–237): Provides for Commission approval of classification, qualifications, and appointing authority for certain positions in the Office of Drug Abuse Policy.

90 Stat. 503 (Public Law 94–284): Provides for Commission approval of classification, qualifications, and appointing authority for certain positions in the Consumer Products Safety Commission.

APPENDIX II

REORGANIZATION PLAN NO. 2 OF 1978

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, May 23, 1978, pursuant to the provisions of Chapter 9 of Title 5 of the United States Code.

PART I. OFFICE OF PERSONNEL MANAGEMENT

Section 101. Establishment of the Office of Personnel Management and its Director and other matters

There is hereby established as an independent establishment in the Executive Branch, the Office of Personnel Management (the "Office"). The head of the Office shall be the Director of the Office of Personnel Management (the "Director"), who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be compensated at the rate now or hereafter provided for level II of the Executive Schedule. The position referred to in 5 U.S.C. 5109(b) is hereby abolished.

Section 102. Transfer of functions

Except as otherwise specified in this Plan, all functions vested by statute in the United States Civil Service Commission, or the Chairman of said Commission, or the Boards of Examiners established by 5 U.S.C. 1105 are hereby transferred to the Director of the Office of Personnel Management.

Section 103. Deputy Director and Associate Directors

(a) There shall be within the Office a Deputy Director who shall be appointed by the President by and with the advice and consent of the Senate and who shall be compensated at the rate now or hereafter provided for level III of the Executive Schedule. The Deputy Director shall perform such functions as the Director may from time to time prescribe and shall act as Director during the absence or disability of the Director or in the event of a vacancy in the Office of the Director.

(b) There shall be within the Office not more than five Associate Directors, who shall be appointed by the Director in the excepted service, shall have such titles as the Director shall from time to time determine, and shall receive compensation at the rate now or hereafter provided for level IV of the Executive Schedule.

Section 104. Functions of the Director

The functions of the Director shall include, but not be limited to, the following:

(a) Aiding the President, as the President may request, in preparing such rules as the President prescribes, for the administration of

civilian employment now within the jurisdiction of the United States Civil Service Commission.

(b) Advising the President, as the President may request, on any matters pertaining to civilian employment now within the jurisdiction of the United States Civil Service Commission.

(c) Executing, administering and enforcing the Civil Service rules and regulations of the President and the Office and the statutes governing the same, and other activities of the Office including retirement and classification activities except to the extent such functions remain vested in the Merit Systems Protection Board pursuant to Section 202 of this Plan, or are transferred to the Special Counsel pursuant to Section 204 of this Plan.

(d) Conducting or otherwise providing for studies and research for the purpose of assuring improvements in personnel management, and recommending to the President actions to promote an efficient Civil Service and a systematic application of the merit system principles, including measures relating to the selection, promotion, transfer, performance, pay, conditions of service, tenure, and separations of employees.

(e) Performing the training responsibilities now performed by the United States Civil Service Commission as set forth in 5 U.S.C. Chapter 41.

Section 105. Authority to delegate functions

The Director may delegate, from time to time, to the head of any agency employing persons in the competitive service, the performance of all or any part of those functions transferred under this Plan to the Director which relates to employees, or applicants for employment, of such agency.

PART II. MERIT SYSTEMS PROTECTION BOARD

Section 201. Merit Systems Protection Board

(a) The United States Civil Service Commission is hereby redesignated the Merit Systems Protection Board. The Commissioners of the United States Civil Service Commission are hereby redesignated as members of the Merit Systems Protection Board (the "Board").

(b) The Chairman of the Board shall be its chief executive and administrative officer. The position of Executive Director, established by 5 U.S.C. 1103(d), is hereby abolished.

Section 202. Functions of the Merit Systems Protection Board and related matters

(a) There shall remain with the Board the hearing, adjudication, and appeals functions of the United States Civil Service Commission specified in 5 U.S.C. 1104(b)(4) (except hearings, adjudications and appeals with respect to examination ratings), and also found in the following statutes:

(i) 5 U.S.C. 1504–1507; 7325, 5335, 7521, 7701 and 8347(d);

(ii) 38 U.S.C. 2023

(b) There shall remain with the Board the functions vested in the United States Civil Service Commission, or its Chairman, pursuant to 5 U.S.C. 1104 (a)(5) and (b)(4) to enforce decisions rendered pursuant to the authorities described in Subsection (a) of this Section.

(c) Any member of the Board may request from the Director, in connection with a matter then pending before the Board for adjudication, an advisory opinion concerning interpretation of rules, regulations, or other policy directives promulgated by the Office of Personnel Management.

(d) Whenever the interpretation or application of a rule, regulation, or policy directive of the Office of Personnel Management is at issue in any hearing, adjudication, or appeal before the Board, the Board shall promptly notify the Director, and the Director shall have the right to intervene in such proceedings.

(e) The Board shall designate individuals to chair performance rating boards established pursuant to 5 U.S.C. 4305.

(f) The Chairman of the Board shall designate representatives to chair boards of review established pursuant to 5 U.S.C. 3383(b).

(g) The Board may from time to time conduct special studies relating to the Civil Service, and to other merit systems in the Executive Branch and report to the President and the Congress whether the public interest in a workforce free of personnel practices prohibited by law or regulations is being adequate protected. In carrying out this function the Board shall make such inquiries as may be necessary, and, to the extent permitted by law, shall have access to personnel records or information collected by the Office of Personnel Management and may require additional reports from other agencies as needed. The Board shall make such recommendations to the President and the Congress as it deems appropriate.

(h) The Board may delegate the performance of any of its administrative functions to any officer or employee of the Board.

(i) The Board shall have the authority to prescribe such regulations as may be necessary for the performance of its functions. The Board shall not issue advisory opinions. The Board may issue rules and regulations, consistent with statutory requirements, defining its review procedures, including the time limits within which an appeal must be filed and the rights and responsibilities of the parties to an appeal. All regulations of the Board shall be published in the Federal Register.

Section 203. Savings provision.

The Board shall accept appeals from agency actions effected prior to the effective date of this Plan. On the effective date of Part II of this Plan, proceedings then before the Federal Employee Appeals Authority shall continue before the Board; proceedings then before the Appeals Review Board and proceedings then before the United States Civil Service Commission on appeal from decisions of the Appeals Review Board shall continue before the Board; other employee appeals before boards or other bodies pursuant to law or regulation shall continue to be processed pursuant to those laws or regulations. Nothing in this section shall affect the right of a Federal employee to judicial review under applicable law.

Section 204. The special counsel

(a) There shall be a Special Counsel to the Board appointed for a term of four years by the President by and with the advice and consent of the Senate, who shall be compensated as now or hereafter provided for level IV of the Executive Schedule.

(b) There are hereby transferred to the Special Counsel all functions with respect to investigations relating to violations of 5 U.S.C. Chapter 15; 5 U.S.C. Subchapter III of Chapter 73 (Political Activities); and 5 U.S.C. 552(a)(4)(F) (public information).

(c) The Special Counsel may investigate, pursuant to 5 U.S.C. 1303 allegations of personnel practices which are prohibited by law or regulation.

(d) When in the judgment of the Special Counsel, such personnel practices exist, he shall report his findings and recommendations to the Chairman of the Merit Systems Protection Board, the agency affected, and to the Office of Personnel Management, and may report such findings to the President.

(e) When in the judgment of the Special Counsel, the results of an investigation would warrant the taking of disciplinary action against an employee who is within the jurisdiction of the Board, the Special Counsel shall prepare charges against such employee and present them with supporting documentation to the Board. Evidence supporting the need for disciplinary action against a Presidential appointee shall be submitted by the Special Counsel to the President.

(f) The Special Counsel may appoint personnel necessary to assist in the performance of his functions.

(g) The Special Counsel shall have the authority to prescribe rules and regulations relating to the receipt and investigation of matters under his jurisdiction. Such regulations shall be published in the Federal Register.

(h) The Special Counsel shall not issue advisory opinions.

PART III. FEDERAL LABOR RELATIONS AUTHORITY

Section 341. Establishment of the Federal Labor Relations Authority

(a) There is hereby established, as an independent establishment in the Executive Branch, the Federal Labor Relations Authority (the "Authority"). The Authority shall be composed of three members, one of whom shall be Chairman, not more than two of whom may be adherents of the same political party, and none of whom may hold another office or position in the Government of the United States except where provided by law or by the President.

(b) Members of the Authority shall be appointed by the President, by and with the advice and consent of the Senate. The President shall designate one member to serve as Chairman of the Authority, who shall be compensated at the rate now or hereafter provided for level III of the Executive Schedule. The other members shall be compensated at the rate now or hereafter provided for level IV of the Executive Schedule.

(c) The initial members of the Authority shall be appointed as follows: one member for a term of two years; one member for a term of three years; and the Chairman for a term of four years. Thereafter, each member shall be appointed for a term of four years. An individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced.

(d) The Authority shall make an annual report on its activities to the President for transmittal to Congress.

Section 302. Establishment of the General Counsel of the Authority

There shall be a General Counsel of the Authority, who shall be appointed by the President, by and with the advice and consent of the Senate for a term of four years, and who shall be compensated at the rate now or hereafter provided for level V of the Executive Schedule. The General Counsel shall perform such duties as the Authority shall from time to time prescribe, including but not limited to the duty of determining and presenting facts required by the Authority in order to decide unfair labor practice complaints.

Section 303. The Federal Service Impasses Panel

The Federal Service Impasses Panel, established under Executive Order 11491, as amended, (the "Panel") shall continue, and shall be a distinct organizational entity within the Authority.

Section 304. Functions

Subject to the provisions of Section 306, the following functions are hereby transferred:

(a) To the Authority—

(1) The functions of the Federal Labor Relations Council pursuant to Executive Order 11491, as amended;

(2) The functions of the Civil Service Commission under Sections 4(a) and 6(e) of Executive Order 11491, as amended;

(3) The functions of the Assistant Secretary of Labor for Labor-Management Relations, under Executive Order 11491, as amended, except for those functions related to alleged violations of the standards of conduct for labor organizations pursuant to Section 6(a)(4) of said Executive Order; and,

(b) to the Panel—the functions and authorities of the Federal Service Impasses Panel, pursuant to Executive Order 11491, as amended.

Section 305. Authority decisions

The decisions of the Authority on any matter within its jurisdiction shall be final and not subject to judicial review.

Section 306. Other provisions

Unless and until modified, revised, or revoked, all policies, regulations, and procedures established, and decisions issued, under Executive Order 11491, as amended, shall remain in full force and effect. There is hereby expressly reserved to the President the power to modify the functions transferred to the Federal Labor Relations Authority and the Federal Service Impasses Panel pursuant to Section 304 of this Plan.

Section 307. Savings provision

All matters which relate to the functions transferred by Section 304 of this Plan, and which are pending on the effective date of the establishment of the Authority before the Federal Labor Relations Council, the Vice Chairman of the Civil Service Commission, or the Assistant Secretary of Labor for Labor-Management Relations shall continue before the Authority under such rules and procedures as the Authority shall prescribe. All such matters pending on the effective date of the establishment of the Authority before the Panel, shall con-

tinue before the Panel under such rules and procedures as the Panel shall prescribe.

PART IV. GENERAL PROVISIONS

Section 401. Incidental transfer

So much of the personnel, property, records, and unexpended balances of appropriations, allocations and other funds employed, used, held, available, or to be made available in connection with the functions transferred under this Plan, as the Director of the Office of Management and Budget shall determine, shall be transferred to the appropriate agency, or component at such time or times as the Director of the Office of Management and Budget shall provide, except that no such unexpended balances transferred shall be used for purposes other than those for which the appropriation was originally made. The Director of the Office of Management and Budget shall provide for terminating the affairs of any agencies abolished herein and for such further measures and dispositions as such Director deems necessary to effectuate the purposes of this Reorganization Plan.

Section 402. Interim officers

(a) The President may authorize any persons who, immediately prior to the effective date of this Plan, held positions in the Executive Branch of the Government, to act as Director of the Office of Personnel Management, the Deputy Director of the Office of Personnel Management, the Special Counsel, the Chairman and other members of the Federal Labor Relations Authority, the Chairman and other members of the Federal Service Impasses Panel, or the General Counsel of the Authority, until those offices are for the first time filled pursuant to the provisions of this Reorganization Plan or by recess appointment, as the case may be.

(b) The President may authorize any such person to receive the compensation attached to the Office in respect of which that person so serves, in lieu of other compensation from the United States.

Section 403. Effective date

The provisions of this Reorganization Plan shall become effective at such time or times, on or before January 1, 1979, as the President shall specify, but not sooner than the earliest time allowable under Section 906 of Title 5, United States Code.

AMENDMENT TO REORGANIZATION PLAN NO. 2 OF 1978

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled July 11, 1978, pursuant to the provisions of chapter 9 of title 5 of the United States Code.

Reorganization plan No. 2 of 1978, which was transmitted to the Senate and the House of Representatives in Congress assembled on May 23, 1978, is hereby amended by deleting the present section 104(c) and substituting therefore a new section 104(c) as follows:

"(c) Executing, administering and enforcing the civil service rules and regulations of the President and the Office and the statutes governing the same, and other activities of the Office including retirement and classification activities except to the extent such functions remain vested in the Merit Systems Protection Board pursuant to section 20

of this plan, or are transferred to the Special Counsel pursuant to section 204 of this plan. The Director shall provide the public, where appropriate, a reasonable opportunity to comment and submit written views on the implementation and interpretation of such rules and regulations;"

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Calendar No. 973

95TH CONGRESS
2d Session

SENATE

REPORT
No. 95-1050

TRANSFERRING CERTAIN PROPERTY OF THE UNITED STATES TO THE DISTRICT OF COLUMBIA REDEVELOPMENT LAND AGENCY

JULY 31 (legislative day, MAY 17), 1978.—Ordered to be printed

Mr. EAGLETON, from the Committee on Governmental Affairs, submitted the following

REPORT

[To accompany S. 3119]

The Committee on Governmental Affairs, to which was referred the bill (S. 3119) to transfer certain real property of the United States to the District of Columbia Redevelopment Land Agency, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE BILL

The purpose of the bill is to authorize the Mayor of the District of Columbia to transfer title to certain real property in Southwest Washington, between 4th and 6th Streets, just north of the railway tracks, from the United States to the District of Columbia Redevelopment Land Agency (RLA). The RLA intends to sell or lease the land to a developer in accordance with the urban renewal plan for Southwest Project Area C. Essentially, the bill will clear any lingering title to land the Federal Government relinquished to certain railroads at the turn of the century for other land within the District.

BACKGROUND

Pursuant to the Union Station Acts of Congress, approved on February 12, 1901 (31 Stat. 767), and on February 29, 1903 (32 Stat. 909), certain public streets in Southwest Washington were vacated and abandoned, and perpetual use of these areas was granted to the Philadelphia, Baltimore & Potomac Railroad Co., the Baltimore &

Ohio Railroad Co., and the Terminal Co. The United States, however, retained bare title to these lands. Congress made the grant to the railroad in consideration for the exchange and transfer to the United States of certain lands in the District then owned by the railroads.

For many years, these lands were used for such purposes as switch tracks, loading platforms, open air storage, truck-loading areas, and produce scales. During this time the railroad paid taxes on these lands to the District of Columbia.

But with the decline in train traffic at midcentury, the District began planning for the redevelopment of the railroad property for commercial use that would generate employment and tax revenues. An urban renewal plan for Southwest Project C initially was approved by the District of Columbia Board of Commissioners on November 30, 1956, and subsequently has been approved by the District Council. Accordingly, during the period from 1958 to 1962, the Redevelopment Land Agency purchased the rights and interests of the railroad companies for a total of $1,521,635. Title was conveyed to the Agency by House Joint Resolution 397 in 1965. Thereafter, the Agency found it necessary to acquire the property, some 41,000 square feet, which is the subject of the present bill, and it acquired the railroads' rights and interests in the property in 1970 for $451,000.

In 1975, the House, in H.R. 9958, voted to transfer title for the 41,000 square feet, but the Senate Committee on the District of Columbia deferred action at that time until the District had assurances that a private developer would fully utilize the entire site. After public offering, the Redevelopment Land Agency has selected a group that has submitted plans for a $40 million to $50 million office complex and is prepared to commence construction this year.

In view of the value of the land which the railroads transferred to the United States in consideration for the right to use the parcels in question, and of the taxes the railroads have paid on these parcels over the years, it was the opinion of independent appraisers that the value of the railroads' rights and interests in these parcels was equivalent to the value of the land had the legal title been held by the railroads. The authority which would be granted by the enactment of S. 3119 is needed, therefore, to assure RLA legal title prior to the commencement of construction.

There are no buildings on the property, other than a fan shaft for the Metro. Because the triangular property is surrounded by a sheer drop to the public street on one side, the railroad on the second side, and an RLA parcel on the remaining side, its only appropriate use is by the developer of the adjacent parcel.

The bill was submitted as part of the Mayor's 1977 legislative package, and the Mayor's report indicates that: "The Office of Management and Budget has advised that there is no objection."

NEED FOR LEGISLATION

This legislation is outside the scope of the Council's authority since it concerns property of the United States, which the Council, under section 602(a)(3) of the Home Rule Act (87 Stat. 774, Public Law 93-198) is powerless to affect. Since the Council has already approved an urban renewal plan which authorizes the RLA to dispose of the

subject property (once title is acquired), no further Council action will be required to carry out the plan.

In connection with other property with a similar history, Congress transferred title by enacting Public Law 89–317. At that time, legal opinions were sought from the Justice Department and the General Services Administration. On October 22, 1963, the Assistant Attorney General, Lands Division, Department of Justice, advised the Executive Director of the District of Columbia Redevelopment Land Agency that "the General Services Administration, through the Administrator, may assume control of the Government's interest in the real estate as surplus property, and dispose of it under the provisions of the Surplus Property Act." The letter stated that if this procedure could not be followed, "it may be necessary for Congress to specifically authorize some department or agency to take control of and convey the interest of the United States."

In a letter dated April 3, 1975, the General Counsel of the General Services Administration concluded "that the Congress has retained to itself the authority to take any further action with respect to the vacated streets."

The authority which would be granted by S. 3119 is needed, therefore, to clear any cloud on the title under the Union Station Acts, and transfer it to the Redevelopment Land Agency for an urban renewal project.

LEGISLATIVE HISTORY

More than two decades of planning by the Redevelopment Land Agency has gone into the planning and into land acquisition for this urban renewal project. The Senate Committee on the District of Columbia held hearings and reported favorably on House Joint Resolution 397 (Report No. 871, 89th Congress, 1st sess.) by which title to most of the railroad land within the designated renewal project area was conveyed to the District. The House Committee on the District of Columbia held hearings September 29, 1975 (Report No. 94–597, 94th Congress, 1st sess.), on transfer of title to the approximately 41,000 square feet needed to complete the project site. For as much as these hearings fully explored the need to clarify and convey title under the Union Station Acts, and since the square footage involved in this legislation will complete the site for an urban renewal project first planned in 1956 and no opposition has been expressed, it was deemed further hearings would be redundant and not necessary.

SUMMARY OF THE BILL

Section 1 authorizes the Mayor to transfer to the RLA, on behalf of the United States and in accordance with the approved urban renewal plan for the area, all right, title and interest of the United States in the subject property.

Section 2 affirms the authority of the RLA to sell or lease the property, in accordance with the District of Columbia Redevelopment Act of 1945, to one or more developers.

Section 3 makes it clear that the transfer to the RLA is not to be considered a local grant-in-aid for the purposes of title I of the Housing Act of 1949.

Section 4 defines certain terms used in the bill.

REGULATORY IMPACT STATEMENT

Pursuant to section 602 of Senate Resolution 4, the committee has considered the potential regulatory impact and paperwork that will result from this legislation and has determined that there will be no effect thereon.

CONGRESSIONAL BUDGET OFFICE,
U.S. CONGRESS,
Washington, D.C., July 28, 1978.

Hon. ABRAHAM RIBICOFF,
Chairman, Committee on Governmental Affairs,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed S. 3120, a bill to enhance the flexibility of contractual authority of the Temporary Commission on Financial Oversight of the District of Columbia, ordered reported by the Senate Committee on Governmental Affairs on July 24, 1978.

Based on this review, it appears that no additional net cost to the government would be incurred as a result of enactment of this bill.

Sincerely,

ALICE M. RIVLIN, *Director.*

THE DISTRICT OF COLUMBIA,
Washington, D.C., March 22, 1978.

The Honorable the PRESIDENT OF THE SENATE.

DEAR MR. PRESIDENT: The Government of the District of Columbia has the honor to submit for the consideration of the 95th Congress a draft bill "To transfer certain real property of the United States to the District of Columbia Redevelopment Land Agency." This proposed legislation is essentially similar to H.R. 9958, passed by the House of Representatives on November 10, 1975, and is a part of the District's 1977 Legislative Program.

The bill would authorize the Mayor (consistent with the approval by the Council of the District of Columbia of the urban renewal plan requiring such action) to transfer to the District of Columbia Redevelopment Land Agency, certain property within the southwest urban renewal area. The fee simple title to this property is held currently by the United States.

In 1901, the "Union Station Acts" (31 Stat. 767 and 32 Stat. 909) closed to public use certain streets within the District and granted the use of this land to two railroad companies and the railroad terminal company. The Redevelopment Land Agency, in implementing the plan for Southwest Urban Renewal Project Area C, planned to utilize certain property lying within the area controlled by the railroad. As a consequence, the railroads subsequently sold to the Agency the fee title to those portions of the property owned by them in fee simple, as well as all right, title, and interest in the United States-owned property viested in the railroads by the "Union Station Acts". The United States, nevertheless, retains bare legal title to this property.

The provisions of the draft bill would effectuate the transfer from the United States to the District of Columbia of fee simple title to that parcel described herein, so that the Agency could sell or lease the land for private development, as part of the urban renewal plan for Southwest Urban Renewal Project Area C. Currently, a development proposal for the parcel described, and adjacent parcels, includes the building of a major office building, a parking facility, and a large motel, which is projected to cost between 40 and 50 million dollars. A developer has been selected for this project, who advises that construction could commence on the project in the fall of 1978, depending upon the transfer of title to the parcel described in the bill.

The land, title to which is intended to be transferred by the provisions of the bill, totals about 41,000 square feet, and is contiguous to, and a natural part of, land comprising some 145,000 square feet already owned by the District of Columbia. Final development of this entire parcel has been delayed for several years because of the inability of the Agency to obtain clear title to the 41,000 square feet, thus depriving the District of Columbia of added tax revenues and resulting in increased project costs. Inasmuch as the Congress effectuated the original transfer of this property, we defer to the Congress as to whether the remaining Federal interest requires some compensation to the United States.

For these reasons, the District Government strongly recommends the enactment of the proposed legislation as a very necessary and desirable measure to help complete the development of Southwest Urban Renewal Project Area C and to supplement the revenues of the District. Because of the imminent need for the developer to make substantial financial commitments in connection with this project, I urge the Congress give this matter prompt and favorable consideration.

The Office of Management and Budget has advised that, from the standpoint of the Administration's program, there is no objection to the submission of this proposed legislation to the Congress.

Sincerely yours,

WALTER E. WASHINGTON,
Mayor.

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Calendar No. 974

95TH CONGRESS } SENATE { REPORT
2d Session } { No. 95–1051

ENHANCING THE FLEXIBILITY OF CONTRACTUAL AUTHORITY OF THE TEMPORARY COMMISSION ON FINANCIAL OVERSIGHT OF THE DISTRICT OF COLUMBIA

JULY 31 (legislative day, MAY 17), 1978.—Ordered to be printed

Mr. EAGLETON, from the Committee on Governmental Affairs, submitted the following

REPORT

[To accompany S. 3120]

The Committee on Governmental Affairs, to which was referred the bill (S. 3120) to enhance the flexibility of contractual authority of the Temporary Commission on Financial Oversight of the District of Columbia, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

PURPOSE

The purpose of the bill (S. 3120) is to enhance the flexibility of contractual authority of the Temporary Commission on Financial Oversight of the District of Columbia so as to facilitate restructuring of the District's financial management systems and accomplish an audit of the District's financial position on an annual basis.

BACKGROUND

Public Law 94–399 was enacted in 1976 after studies by the General Accounting Office and Arthur Andersen & Co., conducted respectively for the House and Senate District Committees, demonstrated the need for substantial improvement in the financial management systems of the District of Columbia government. The act was designed to help the District become more self-sufficient under the Home Rule Charter and established the specific requirement for the District's financial position to be audited annually by a certified public accountant. The studies referred to above showed that before an audit could be effectively conducted, numerous improvements in accounting and related financial management systems would have to be designed and implemented.

The Temporary Commission on Financial Oversight of the District of Columbia was established under the act to develop and help implement such improvements. To carry out its responsibilities, the Commission was authroized to select and enter into negotiated fixed price contracts with persons qualified to design and install new systems that may be required.

Need for Changes

The Commission, confronted with a number of projects to modernize and make more effective a variety of bookkeeping, payroll, and other financial records, has attempted to encourage broad participation through competition by qualified firms for specific contracts. However, because of the present status of many of the records, the Commission is encountering reluctance on the part of potential contractors to propose fixed price. They point out that in system design work, as in research and development, there are simply too many unknowns to permit them to propose a fixed price without opening them to undue risk. Consequently, they decline to propose at all, thereby reducing the competition. Or they insert numerous conditions and hedges into their proposals which make it difficult for the Commission to make comparative evaluations of the proposals received.

Since the number and size of projects to date have been small, these problems have not been insurmountable. However, as the Commission's program gains momentum, the projects will become larger and more numerous, thereby increasing the Commission's problem of getting first-rate competitive proposals from qualified firms.

To alleviate this, the Committee proposes the first change; namely, the striking of "fixed price" from sections 2(c) and 3(c). Changing these subsections will give the Commission greater flexibility in better fitting the type of contract it uses to the nature of the work to be done. This flexibility should help to increase competition. The change will simply permit the Commission to continue using fixed price when appropriate but employ other types of contracts, such as cost plus fixed fee, when such are more appropriate.

This proposed change would also be in line with the recommendations of the Commission on Government Procurement which was created by Public Law 91–129. With respect to the procurement of professional services, that Commission recommended procurement of such services should be accomplished by using competitive proposals from an adequate number of qualified firms. It also recommended use of negotiation procedures which would take into account the technical competence of the proposers, the proposed concept of the end product, and the professional competence of the bidders as well as cost and fee. The Commission specifically noted that this latter element should not be the dominant factor. These recommendations are extensively incorporated into the procurement processes of the Temporary Commission on Financial Oversight. This proposed first change would enable full incorporation of them.

The second change recommended, the addition of a new subsection (h) to section 2, is also intended to give the Commission added flexibility by permitting it to support certain projects jointly with other Government agencies. Under existing Federal grant programs,

several District government departments have been working with their Federal counterparts to develop improvements in long-standing systems that are now wholly or partly encompassed under Public Law 94–399.

In such cases, the District government contracts for the system improvement and the Federal agency reimburses the District for a portion of the cost, in accordance with an agreement made in advance. The new section 2(h) herein recommended would permit this Commission to participate in such projects.

The Commission would enter into an agreement with the District to finance all or part of that portion of the project not being financed by the Federal grant agency or agencies. The Commission would help the District formulate the project, ensure that the requirements of Public Law 94–399 were included in the Request for Proposal, and, in exchange, the District would give the Commission the rights to participate in or, as appropriate, to veto the selection of the contractor to ensure that the requirements of Public Law 94–399 and the Commission's procurement policies were observed and included in the Request for Proposal and contract, to participate in monitoring the contractor's performance, and to ensure that the system improvements being designed fit into the total program of system improvements for which Public Law 94–399 makes it responsible.

This arrangement not only should help to keep down the Commission's total outlay for contractors but also should help to expedite the program and to bring to bear on the project the expertise of the cognizant Federal agency. The Commission would not plan to use this arrangement often, but only in a few, highly selective projects in order to assure a financial management system adequate to the needs of a modern city.

The third change is the addition of a new subsection 2(i), which authorizes the Commission and the Comptroller General to inspect the facilities, books, and records of all contractors and subcontractors. While virtually all of the contracts entered into by the Commission allow such inspections, this amendment will assure such authority under law, and provide, contractually, for backup inspections by the Comptroller General.

The Comptroller General believes, and the Commission agrees, that this specific authority will greatly improve his ability to perform his general duties under Public Law 94–399, and to meet the requirement in section 2(e)(4) that he approve, disapprove, or modify plans for auditing systems which are submitted to him under the act. The committee also agrees with this assessment. It feels, moreover, that the tighter controls and closer inspections which may result from this authority are needed to cope with the greater contractual flexibility created by other amendments in this bill.

The fourth change, adding a new subsection 2(j), is designed to clarify the Commission's authority to finance that portion of any joint District of Columbia Federal project not financed by the Federal grant agency or agencies. The projects envisioned by this subsection and by the new subsection (h) are those that the Commission would have a duty to undertake, whether or not the District had already done so on its own. Congress has assumed the task of creating the Commission to oversee the entire process of audit and financial reform. It,

therefore, would prefer to assume the cost, and thus the oversight responsibilities, for any overlapping programs.

This new subsection makes Commission funds specifically available for the local share of matching funds in the federally-assisted audit system projects now under development or planned for the near future. Commission funds, in a manner similar to the District's own operating budget, are drawn from two "sources": U.S. Treasury unappropriated funds and those funds already appropriated to the District of Columbia. Contract payments are thus made from a unique blend of funds. The District's local share of matching funds is drawn from a different but also unique mix of moneys. The committee wishes to avoid any confusion as to the local or Federal source of the District's share under the Federal grant program. This subsection is drafted, therefore, to let all Commission funds be used for the local share, due to the singular mix of funds involved and the Commission's own independent duty to perform the same projects.

The fifth change amends section 3 and 4 of the act by striking out "1979" each place it appears therein and inserting in lieu thereof, "1982". The act mandated that the Commission would oversee and complete the first three annual audits. Inasmuch as the Commission was not organized and did not have full-time staff until the latter half of 1977, and because of the enormity of the task confronted, a first audit will not be possible until 1980, with subsequent audits under the Commission mandate in 1981 and concluding in 1982.

Legislative Hearings

The need for greater flexibility to assure competition in the development of an effective and reliable financial management system for the District of Columbia repeatedly has been discussed at public meetings of the Temporary Commission on Financial Oversight, six of the eight members of which are, by the act, drawn from Congress. Since two of those members are the chairman and ranking minority member of the Senate Subcommittee on Governmental Efficiency and the District of Columbia, which has been exercising continued oversight of progress toward a complete and thorough audit of the District's financial position, and since the General Accounting Office maintains constant oversight of the Commission and makes periodic reports to Congress, it was deemed hearings in the Senate would be superfluous. The provisions of this bill, as amended, have been fully aired by the Commission and were approved in a public meeting in the Capitol of the United States on May 9, 1978, and in a public meeting in the House of Representatives on July 20, 1978.

Summary of the Bill as Amended

Section 1, as amended, strikes the phrase "fixed price" from Subsections 2(c) and 3(c) of the act of September 4, 1976 (Public Law 94–399, 9 stat. 1205).

Section 2, as amended, amends Section 2 of the above act by adding the following three (3) new subsections:

> (h) The commission may select the government of the District of Columbia as a qualified person under subsection (a), and the chairman of the commission may enter into

contracts with the government of the District of Columbia under subsection (c).

(i)(1) The commission is entitled, through an authorized representative, to inspect the facilities and audit the books and records of any contractor performing a contract under this Act, and any subcontractor performing any subcontract under a contract made by the commission under this Act.

(2) Each contract entered into under this Act shall provide that the Comptroller General and his representatives are entitled, until the expiration of three years after final payment, to examine any pertinent books, documents, papers, or records of the contractor or any of his subcontractors engaged in the performance of and involving transactions relating to such contract or subcontract.

(j) Payments made by the commission to the government of the District of Columbia under contracts entered into pursuant to the authority of this Act shall be available for matching purposes under any federally funded grant program provided that the grant is for a purpose similar to any purpose specified in section 2(a) of this Act.

Section 3, as amended, strikes out, in sections 3 and 4 of such Act, the year "1979" each place it appears, and inserts the year "1982" in lieu thereof.

Regulatory Impact Statement

Pursuant to section 602 of Senate Resolution 4, the committee has considered the potential regulatory impact and paperwork that will result from this legislation and has determined there will be no effect thereon.

Cost Estimate

Congressional Budget Office,
U.S. Congress,
Washington, D.C., July 28, 1978.

Hon. Abraham Ribicoff,
Chairman, Committee on Governmental Affairs, U.S. Senate, Dirksen Senate Office Building, Washington, D.C.

Dear Mr. Chairman: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed S. 3120, a bill to enhance the flexibility of contractual authority of the Temporary Commission on Financial Oversight of the District of Columbia, ordered reported by the Senate Committee on Governmental Affairs on July 24, 1978.

Based on this review, it appears that no additional net cost to the government would be incurred as a result of enactment of this bill.

Sincerely,

Alice M. Rivlin, *Director.*

Changes in Existing Law

In compliance with subsection 4 of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is

enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

Public Law 94–399, September 4, 1976

AN ACT To provide for an independent audit of the financial condition of the government of the District of Columbia

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there is hereby established the Temporary Commission on Financial Oversight of the District of Columbia (hereinafter referred to as the "commission")

* * * * * * *

SEC. 2(a) * * *

(c) Upon the selection by the commission of each qualified person to develop and implement a plan pursuant to this section, the chairman of the commission shall enter into a negotiated [fixed price] contract or contracts with that person for the development and implementation of such plan.

* * * * * * *

(h) The commission may select the government of the District of Columbia as a qualified person under subsection (a), and the chairman of the commission may enter into contracts with the government of the District of Columbia under subsection (c).

(i) (1) The Commission is entitled through an authorized representative, to inspect the facilities and audit the books and records of any contractor performing a contract under this Act, and any subcontractor performing any subcontract under a contract made by the commission under this Act.

(2) Each contract entered into under this Act shall provide that the Comptroller General and his representatives are entitled, until the expiration of three years after final payment, to examine any pertinent books, documents, papers, or records of the contractor or any of his subcontractors engaged in the performance of and involving transactions relating to such contract or subcontract.

(j) Payments made by the commission to the government of the District of Columbia under contracts entered into pursuant to the authority of this Act shall be available for matching purposes under any federally funded grant program provided that the grant is for a purpose similar to any purpose specified in section 2(a) of this Act.

* * * * * * *

SEC. 3 * * *

(b) The commission is further authorized to cause to be undertaken, on behalf of the government of the District of Columbia, by a certified public accountant licensed in the District of Columbia, an audit or audits of the financial position and results of operations of the District of Columbia for each fiscal year or years next following September 30, 1977, or the date recommended by the Comptroller General for the conduct of a balance sheet audit pursuant to subsection (a) of this section, whichever last occurs, and which precede the fiscal year commencing October 1, [1979.] *1982.*

(c) Upon the selection by the commission of each qualified person to conduct an audit pursuant to this section, the chairman of the

commission shall enter into a negotiated [fixed price] contract with that person for that purpose. Each such audit shall be carried out in accordance with generally accepted auditing standards and the financial statements shall be prepared in accordance with generally accepted accounting principles. The results of each such audit shall be submitted to the Congress, the President of the United States, the Council of the District of Columbia, the Mayor of the District of Columbia, and the Comptroller General.

* * * * * * *

SEC. 4. (a) For the fiscal year beginning October 1, [1979] *1982*, and each fiscal year thereafter, the government of the District of Columbia shall conduct, out of funds of the government of the District of Columbia, an audit of the financial operations of such government. Each such audit shall be conducted by a certified public accountant licensed in the District of Columbia and carried out in accordance with generally accepted auditing standards and the financial statements shall be prepared in accordance with generally accepted accounting principles.

(b) For the purpose of conducting an audit for each such fiscal year as required by subsection (a) of this section, the Mayor of the District of Columbia shall, on or after January 2, [1979] *1982*, select, subject to the advice and consent of the Council of the District of Columbia, a qualified person to conduct such audits for the fiscal year commencing October 1, [1979] *1982*, and the next following three fiscal years. Thereafter, each individual elected as Mayor in a general election held for Mayor of the District of Columbia shall, on or after January 2 next following his or her election to, and the assuming of, the Office of Mayor, select, subject to the advice and consent of the Council of the District of Columbia, a qualified person to conduct such audits for the fiscal year commencing October 1 of the calendar year in which such Mayor takes office, and the next following three fiscal years. The person previously selected for a four-year period shall not succeed himself or herself. If the Council fails to act on any such selection within a thirty-day period following the date on which it receives from the Mayor the name of such person so selected, the Mayor shall be authorized to enter into a contract with that person for the conduct of such audits. If any person so selected by the Mayor to conduct any such audits for such fiscal years is rejected by the Council, the Mayor shall submit to the Council the name of another qualified person selected by the Mayor to conduct such audits. In the event that the Council rejects the second person so selected by the Mayor, the Mayor shall, within thirty days following that rejection, notify the chairman of the Committee on Appropriations of the Senate and the chairman of the Committee on Appropriations of the House of Representatives, in writing, of that fact. Within fifteen days following the receipt of that notice, such chairmen shall jointly select a person to conduct such audits and shall inform the Mayor, in writing, of the name of the person so selected. Within ten days following the receipt by the Mayor of such name, the Mayor shall enter into a contract with such person pursuant to which that person shall conduct such audits for such fiscal years as herein provided.

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Calendar No. 975

95TH CONGRESS
2d Session

SENATE

REPORT
No. 95-1052

EXTENSION OF THE FOOD STAMP WORKFARE PILOT PROJECTS

JULY 31 (legislative day, MAY 17), 1978.—Ordered to be printed

Mr. TALMADGE, from the Committee on Agriculture, Nutrition, and Forestry, submitted the following

REPORT

[To accompany S. 3271]

The Committee on Agriculture, Nutrition, and Forestry, to which was was referred the bill (S. 3271) to amend the Food Stamp Act of 1977 to extend the operation of the workfare pilot projects, having considered the same, reports favorably thereon with an amendment and an amendment to the title and recommends that the bill (as amended) do pass.

SHORT EXPLANATION

S. 3271 would extend the final reporting date established by the Food Stamp Act of 1977 for the food stamp workfare pilot projects to October 1, 1980.

COMMITTEE AMENDMENT

The committee amendment to the test of S. 3271 strikes all after the enacting clause and inserts a substitute text that contains technical and conforming changes. S. 3271 will then be identical to H.R. 13149, legislation reported by the Committee on Agriculture of the House of Representatives.

BACKGROUND AND NEED

I.

The Food Stamp Act of 1977 mandates that the Secretary of Agriculture and the Secretary of Labor jointly conduct workfare pilot projects involving the performance of work in a public service capacity in exchange for food stamp benefits. The workfare pilot projects are to be conducted in one urban and one rural area in each of the Depart-

ment's Food and Nutrition Service's seven regions and representative of a cross section of the political subdivisions in the respective States within the region. The number of pilot projects to be conducted is limited to 14.

The Departments of Agriculture and Labor are to report to the appropriate congressional committees on the progress of the projects before March 30, 1978, and September 30, 1978. A final report containing the results of the projects is to be submitted before March 30, 1979. The first interim report was submitted to the committees in compliance with the requirements of the act. However, due to unanticipated delays, the Department of Agriculture has requested legislation that would extend the operation of the workfare pilot projects and final reporting to October 1, 1980. The committee believes this request is warranted.

II.

Participants in the pilot projects are members of food stamp households whose earned income is less than their coupon allotment. They will be required to work in a public service capacity if they are unable to secure work in the private sector. The required hours of employment will be determined by dividing the household's coupon allotment by the Federal minimum wage. Compensation will be paid in the form of the monthly coupon allotment to which the household would normally be entitled. Persons required to participate in the pilot projects who refuse to accept public service employment will not be eligible for food stamp benefits during the month of refusal.

III.

The Departments of Agriculture and Labor have been working together to establish the administrative and regulatory provisions of the workfare pilot projects. However, because the section of the statute authorizing workfare makes specific reference to other provisions of the program that are being revised, such as the elimination of the purchase requirement and the new benefit levels, it has been determined that operation of the workfare pilot projects cannot be commenced until the new provisions are in effect. The Department of Agriculture anticipates that State agency implementation of the new provisions should commence by January 1979. In order to maintain the timetable for the final report established by the act, operation and evaluation of the projects would have to take place during the first 3 months of 1979. Three months would hardly be enough time to obtain sufficient data to evaluate the projects' effectiveness and compile a final report.

S. 3271 would require an interim report on the progress of the pilot projects before October 2, 1979, and a final report describing the results of such pilot projects before October 2, 1980. This extension would allow the workfare pilot projects to run through April 1980, so that all local operations may have at least 1 full year of operation, and then allow 6 months for the final collection and tabulation of data for the final report.

DEPARTMENTAL VIEWS

S. 3271 is an administration request bill. The letter from the Secretary of Agriculture recommending the enactment of the bill reads as follows:

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, D.C., June 5, 1978.

Hon. WALTER F. MONDALE,
President of the Senate,
Washington, D.C.

DEAR MR. PRESIDENT: Enclosed for the consideration of Congress is a proposed bill to extend until October 1, 1980, the final reporting date established in section 17(b)(2) of the Food Stamp Act of 1977 (Public Law 95–113) for the food stamp workfare demonstration project.

Current legislation requires that a final report be submitted on March 29, 1979. Our General Counsel has advised us that since the section of the statute authorizing workfare makes specific reference to other provisions of the program which are being revised (such as the elimination of the purchase requirement and the new benefit levels), we may not legally commence workfare project operation until new provisions are in effect. As you know, the Department published the initial package of proposed regulations to implement Public Law 95–113 on May 2, 1978. Final regulations are scheduled to be published in late summer, and actual State agency implementation of the provisions should commence by January 1979. In order to maintain the timetable for the final workfare report established by current legislation, both project operation and evaluation would have to take place during the first 3 months of 1979. Our General Counsel has further advised that extension of the project beyond the operational date is not legislatively authorized and could not withstand legal challenge. Taking these two factors concurrently, it will be very difficult to conduct the congressionally mandated workfare project under the parameters of the current legislation, since the projects would have only a few months of operation. It is impossible to have any meaningful test in so short a period of time.

The proposed legislation would allow for a final report no later than October 1, 1980. This will allow the workfare projects to run through about April 1, 1980, so that all local operations may have at least 1 full year of operation, and then allow 6 months for the final collection and tabulation of data and preparation of the report. The proposed legislation retains the interim report due on September 29, 1978, and provides for an additional interim report by October 1, 1979.

The Office of Management and Budget advises that there is no objection to the presentation of this proposed bill from the standpoint of the administration's program.

A similar letter is being sent to the Speaker of the House.

Sincerely,

BOB BERGLAND, *Secretary.*

Regulatory Impact Evaluation

In compliance with subsection 5 of rule XXIX of the Standing Rules of the Senate, the committee makes the following evaluation of the regulatory impact that would be incurred in carrying out S. 3271.

The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses. S. 3271 would extend the final reporting date established by the Food Stamp Act of 1977 for the food stamp workfare pilot projects. Therefore, no additional paperwork and regulations will be necessary because of the passage of S. 3271.

Cost Estimate

In accordance with section 252 of the Legislative Reorganization Act of 1970, the committee estimates that there will be no additional costs in carrying out S. 3271.

The committee estimate is in accord with the estimate made by the Congressional Budget Office. The letter from the Congressional Budget Office to Chairman Talmadge reads as follows:

Congressional Budget Office,
U.S. Congress,
Washington, D.C., July 20, 1978.

Hon. Herman E. Talmadge,
Chairman, Committee on Agriculture, Nutrition and Forestry, U.S. Senate, Russell Senate Office Building, Washington, D.C. 20510

Dear Mr. Chairman: Pursuant to section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed S. 3271, a bill to amend the Food Stamp Act of 1977 to extend the operation of the workfare pilot projects, as ordered reported by the Senate Committee on Agriculture, Nutrition, and Forestry, July 19, 1978.

Based on this review, it appears that no additional cost to the Government would be incurred as a result of enactment of this bill.

Sincerely,

Alice M. Rivlin, *Director.*

Changes in Existing Law

In compliance with subsection 4 of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

Food Stamp Act of 1977

* * * * * * *

Sec. 17. * * *

(b)(1) * * *

(2) The Secretary shall, jointly with the Secretary of Labor, implement two pilot projects involving the performance of work in return for food stamp benefits in each of the seven administrative regions

of the Food and Nutrition Service of the Department of Agriculture, such projects to be (A) appropriately divided in each region between locations that are urban and rural in characteristics and among locations selected to provide a representative cross-section of political subdivisions in the States and (B) submitted for approval prior to project implementation, together with the names of the agencies or organizations that will be engaged in such projects, to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate. Under such pilot projects, any person who is subject to the work registration requirements pursuant to section 6(d) of this Act, and is a member of a household that does not have earned income equal to or exceeding the allotment to which the household is otherwise entitled pursuant to section 8(a) of this Act, shall be ineligible to participate in the food stamp program as a member of any household during any month in which such person refuses, after not being offered employment in the private sector of the economy for more than thirty days after the initial registration for employment referred to in section 6(d)(1)(i) of this Act, to accept an offer of employment from a political subdivision or a prime sponsor pursuant to the Comprehensive Employment and Training Act of 1973, as amended (29 U.S.C. 812), for which employment compensation shall be paid in the form of the allotment to which the household is otherwise entitled pursuant to section 8(a) of this Act, with each hour of employment entitling the household to a portion of the allotment equal in value to 100 per centum of the Federal minimum hourly rate under the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 206(a)(1)); which employment shall not, together with any other hours worked in any other capacity by such person exceed forty hours a week; and which employment shall not be used by the employer to fill a job opening created by the action of such employer in laying off or terminating the employment of any regular employee not supported under this paragraph in anticipation of filling the vacancy so created by hiring an employee or employees to be supported under this paragraph: *Provided*, That all of the political subdivision's or prime sponsor's public service jobs supported under the Comprehensive Employment and Training Act of 1973, as amended (29 U.S.C. 812), are filled before such subdivision or sponsor can extend a job offer pursuant to this paragraph: *Provided further*, That the sponsor of each such project shall provide the assurances required of prime sponsors under section 205(c) (7), (8), (15), (19), and (24) of the Comprehensive Employment and Training Act of 1973, as amended (29 U.S.C. 845(c)), and the Secretary shall require such sponsors to comply with the conditions contained in sections 208(a) (1), (4), and (5) and (c) and 703(4) of the Comprehensive Employment and Training Act of 1973, as amended (29 U.S.C. 848 (a) and (c) and 983). The Secretary and the Secretary of Labor shall jointly issue reports to the appropriate committees of Congress on the progress of such pilot projects no later than six and twelve months following enactment of this Act, [and shall issue a final report describing the results of such pilot projects no later than eighteen months following enactment of this Act.] *shall issue an interim report no later than October 1, 1979, and shall issue a final report describing the results of such pilot projects no later than October 1, 1980.*

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95TH CONGRESS
2d Session
SENATE
REPORT
No. 95-1053

AMENDING THE PACKERS AND STOCKYARDS ACT OF 1921

JULY 31 (legislative day, MAY 17), 1978.—Ordered to be printed

Mr. TALMADGE, from the Committee on Agriculture, Nutrition, and Forestry, submitted the following

REPORT

[To accompany S. 3272]

The Committee on Agriculture, Nutrition, and Forestry, to which was referred the bill (S. 3272) to amend the Packers and Stockyards Act, 1921, to authorize value based tariffs, having considered the same, reports favorably thereon with an amendment and an amendment to the title and recommends that the bill as amended do pass.

SHORT EXPLANATION

S. 3272, as reported by the Committee on Agriculture, Nutrition, and Forestry, amends the Packers and Stockyards Act to—

(1) Authorize, in addition to per head tariffs, the use of value based or percentage tariffs by firms selling livestock on a commission basis, or any other basis elected by the stockyard or market agency if the Secretary finds it not to be violative of the act; and

(2) Authorize the Secretary of Agriculture to prescribe maximum or minimum rates or charges, or both.

The bill would also require the Secretary of Agriculture to appoint a USDA interagency task force to analyze and recommend methods by which sellers of livestock or their agents may disclose to livestock marketing agencies, dealers, or packers the existence of any lien or security interest in or against their livestock. The Secretary would transmit the findings and conclusions of the task force, including legislative recommendations, to the congressional agriculture committees before February 2, 1979.

COMMITTEE AMENDMENT

The committee amendment strikes all after the enacting clause and inserts in lieu thereof an amendment in the nature of a substitute. The amendment makes technical changes in the bill and adds a new section requiring the appointment of a USDA interagency study group.

★(Star Print) 29-010

Background and Need

I.

In 1921, when Congress enacted the Packers and Stockyards Act, the Secretary of Agriculture was given jurisdiction over the reasonableness of rates at large terminal stockyards that were located for the most part at major rail terminals. These stockyards had a virtual monopoly over commerce in livestock and they were regulated as public utilities.

With the passage of time, more and more of the Nation's livestock were marketed through smaller stockyards known as country auction markets, and there was some concern in the livestock industry over the fact that the Secretary had no jurisdiction over the reasonableness of the rates at these markets. In response to this concern, Congress, in 1958, amended the Packers and Stockyards Act to extend the jurisdiction of the Secretary of Agriculture to include the rates of all auction barns handling livestock transactions in commerce. It is estimated that nearly 2,000 such markets were thereby brought under the rate jurisdiction of the Secretary.

The newly regulated markets duly filed tariffs and a large number, if not a majority, of these tariffs reflected the longstanding practice of charging the consignor of livestock a commission for stockyard services which is usually expressed as a percentage of the price received for the animal. These commissions commonly range between 3 percent and 5 percent and such tariffs are known as percentage or value-based tariffs.

The legislative history of the 1958 amendments discloses no congressional intention of tampering with the basis upon which rates and charges were established by the industry.

II.

In the early and mid-1970's, cattle prices fell and several auction barns filed new percentage tariffs with the Packers and Stockyards Administration of the Department of Agriculture seeking to increase their rates. However, the Packers and Stockyards Administration in a number of instances refused to accept these tariff increases and in two recent administrative proceedings forced markets to accept instead per head tariff schedules which produced significantly less revenue. The Packers and Stockyards Administration took the position that percentage tariffs are illegal under the Packers and Stockyards Act because charges vary depending upon the price received for the animal although the service provided by the auction barn is similar, if not identical. The Packers and Stockyards Administration further held that only tariffs which assess charges on a per head basis are acceptable. See In re *Giles Lowery Stockyards, Inc.*, P. & S. Docket No. 4782, 35 A.D. 267 (1976); and In re *Central Arkansas Auction Sale, Inc., et al.* P. & S. Docket Nos. 5249–5252 36 A.D. 764 (1977). The decisions of the USDA judicial officer in these cases were upheld in *Giles Lowery Stockyards* v. *Department of Agriculture* 565 F. 2d 321 (5th Cir., 1977), and *Central Arkansas Auction Sale, Inc.* v. *Bergland*, 570 F. 2d, 724 (8th Cir., 1978), and the Supreme Court has declined to further review these decisions. (See Nos. 77–1364 and 77–1366, cert. den. June 12, 1978, 46 Law Week 3762).

Due to the tremendous growth in the number of posted stockyards, the monopoly theory under which livestock markets were first brought under regulation by Congress in 1921 is no longer appropriate. Auction markets are frequently located within close proximity to each other and aggressively compete with one another for livestock. The recent Federal investigations into the rates at auction markets have proven exceedingly costly to both the Government and the market operators and have prompted decisions by the USDA judicial officer outlawing a form of tariff employed by a great portion of the industry for more than half a century. (The Secretary of Agriculture estimates that at least 900 livestock marketing agencies employ percentage or value-based tariffs. The decisions themselves reflect the difficulty of applying a monopoly theory of public utility regulation to numerous small independently owned auction barns (which aggressively compete with one another) and could have the effect of eliminating the smaller auction barns, allegedly in the interest of marketing efficiency. (See e.g. *Central Arkansas*, *supra*, 36 A.D. 764 at 822–823.)

III.

The continued availability of competitive, reasonably priced, and conveniently located livestock marketing channels is essential, particularly for small producers. Competition in livestock marketing channels will best serve the public interest in assuring the reasonableness of rates at the thousands of auction markets across the country. This competition is best assured by allowing the individual auction markets to choose their own tariff basis, so long as it is not violative of the Packers and Stockyards Act.

Committee Consideration

The Committee on Agriculture, Nutrition, and Forestry met on July 19, 1978, to consider S. 3272, which was introduced by Chairman Talmadge at the request of the administration. Senator Bumpers introduced S. 2195, a bill similar in purpose to S. 3272, that would remove the jurisdiction of the Secretary of Agriculture over the reasonableness of rates at all but the few larger or isolated auction markets. The committee chose S. 3272 as the preferable vehicle for allowing auction markets to use value based tariffs.

At the committee meeting, Chairman Talmadge presented an amendment for Senator Huddleston. The amendment would require the Secretary of Agriculture to appoint an interagency task force within the Department of Agriculture to analyze and recommend methods by which sellers of livestock or their agents may disclose to livestock marketing agencies, dealers, or packers the existence of any lien or security interest in or against their livestock. The Secretary would transmit the findings and conclusions of the task force, including legislative recommendations, to the congressional agriculture committees before February 2, 1979.

The committee unanimously accepted the Huddleston amendment and unanimously agreed to report S. 3272, as amended, to the Senate.

Section-by-Section Analysis

Section 1(a) would amend section 305 of the Packers and Stockyards Act, 1921, which requires that rates or charges for stockyard

services provided by stockyard owners or market agencies be just, reasonable, and nondiscriminatory, by adding at the end thereof a proviso that rates or charges based upon percentages of the gross sales prices of livestock shall not be prohibited merely because they are based upon such percentages rather than on a per head basis.

Section 1(b) would make correlative amendments to section 310 of such act that would:

(1) Condition the authority of the Secretary of Agriculture to prescribe rates or charges upon a specific finding that existing or proposed rates or charges are violative of section 305, rather than the present standard of unjust, unreasonable, or discriminatory that the Department of Agriculture's judicial officer has recently interpreted to outlaw percentage tariffs;

(2) Add to the end of subsection (a) a proviso that when the Secretary has occasion to exercise the standby authority to prescribe rates, the Secretary is required to do so on a percentage or per head basis at the election of the stockyard owner or market agency, or on any other basis elected by the stockyard owner or market agency unless the Secretary finds such other basis to be violative of section 305; and

(3) Clarify that the Secretary has authority to prescribe maximum or minimum rates or both.

Section 2 would require the Secretary of Agriculture to appoint an interagency task force within the Department of Agriculture for the purpose of analyzing and recommending to the Agriculture Committees of the House and Senate before February 2, 1979, methods by which sellers of livestock or their agents may furnish to livestock marketing agencies, dealers, or packers, information concerning the existence of any lien or security interest in or against such livestock.

Administration Views

In a letter to Vice President Mondale, dated June 7, 1978, Secretary of Agriculture Bergland recommended the enactment of S. 3272. The letter from Secretary Bergland reads as follows:

Department of Agriculture,
Office of the Secretary,
Washington, D.C., June 7, 1978.

Hon. Walter F. Mondale,
President of the Senate,
Washington, D.C.

Dear Mr. President: Transmitted herewith for the consideration of the Congress is a draft bill "To amend the Packers and Stockyards Act, 1921, to authorize value based tariffs."

The Department of Agriculture recommends that the draft bill be enacted. The draft bill would authorize the use of value based or percentage tariffs by firms selling livestock on a commission basis. There are some 2,560 firms subject to the Packers and Stockyards Act that sell livestock on a commission basis at 1,990 posted stockyards. Approximately 900 of the selling agencies currently use value based tariffs when establishing the selling costs for the consignors' livestock. As a general guideline, value based tariffs range from three percent to 5

percent of the gross sales price of the livestock. Such tariffs are used in most States.

Section 305 of the Packers and Stockyards Act (7 U.S.C. 206) provides that all rates and charges for stockyard services shall be "just, reasonable, and nondiscriminatory." A few years ago administrative actions were instituted in which the validity of value based tariffs (i.e., tariffs based upon percentages of the gross sales prices of the livestock) under the current provisions of the act was challenged. The Judicial Officer of the Department has held that such tariffs are inherently discriminatory since different rates are charged for the same services and that the current provisions of the act require the prescription of rates and charges on a per head basis. The decisions and orders of the Judicial Officer were upheld by courts of appeals. Petitions for writ of certiorari are now pending in the Supreme Court.

The Department of Agriculture completed a series of hearings in February of this year to obtain views from livestock producers, stockyard owners, selling agencies, and other interested persons on what the future rate policy should be under the Packers and Stockyards Act. Substantial testimony by many livestock marketing representatives supports the continued use of value based tariffs. The draft bill would amend section 305 of the Act so that such tariffs would not be prohibited as unreasonable or unlawfully discriminatory merely because of the fact that they are based upon percentages of the gross sales prices of livestock, and amend section 310 of the Act accordingly. The other requirements of the Act that the rates and charges be otherwise just, reasonable, and nondiscriminatory would not be affected by the draft bill.

This legislation would not seriously affect the quality of the human environment; therefore, an environmental impact statement is not enclosed. No additional budget outlays would be required as a result of the proposed legislation.

An identical letter has been sent to the Speaker of the House of Representatives.

The Office of Management and Budget advises that there is no objection to the presentation of this proposed legislation from the standpoint of the administration's program.

Sincerely,

BOB BERGLAND, *Secretary.*

REGULATORY IMPACT EVALUATION

In compliance with subsection 5 of rule XXIX of the Standing Rules of the Senate, the committee makes the following evaluation of the regulatory impact that would be incurred in carrying out S. 3272.

The bill is not a regulatory measure in the sense of imposing additional Government-established standards or significant economic responsibilities on private individuals and businesses. The bill, in fact, removes a Government-established standard in the form of Department of Agriculture refusal to accept value based tariffs.

I.

At least 1,100 of the stockyards brought under Packers and Stockyards Administration regulation in 1958 used value based tariffs. Of

that number, some markets have gone out of business and others have converted to tariffs based on per head rates. There are now approximately 900 markets using some form of value based tariffs.

II.

S. 3272 will not affect the personal privacy of those individuals subject to Packers and Stockyards Administration regulation.

III.

The bill will not result in any changes in the recordkeeping requirements under the Packers and Stockyards Administration.

Cost Estimate

In accordance with section 252 of the Legislative Reorganization Act of 1970, the committee estimates that there will be no significant cost incurred as a result of the enactment of the bill. The committee's estimate is in accord with a cost estimate prepared by the Congressional Budget Office.

The cost estimate prepared by the Congressional Budget Office reads as follows:

CONGRESSIONAL BUDGET OFFICE,
U.S. CONGRESS,
Washington, D.C., July 20, 1978.

Hon. HERMAN E. TALMADGE,
Chairman, Committee on Agriculture, Nutrition, and Forestry,
U.S. Senate, Russell Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed S. 3272, a bill to amend the Packers and Stockyards Act, 1921, to authorize value based tariffs, as ordered reported by the Senate Committee on Agriculture, Nutrition, and Forestry, July 19, 1978.

Based on this review, it appears that no significant additional cost to the Government would be incurred as a result of enactment of this bill.

Sincerely,

ALICE M. RIVLIN, *Director.*

Changes in Existing Law

In compliance with subsection 4 of Rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

Packers and Stockyards Act, 1921

* * * * * * *

SEC. 305. All rates or charges made for any stockyard services furnished at a stockyard by a stockyard owner or market agency shall be just, reasonable, and nondiscriminatory, and any unjust,

unreasonable, or discriminatory rate or charge is prohibited and declared to be unlawful: *Provided, That rates and charges based upon percentages of the gross sales prices of livestock shall not be prohibited merely because they are based upon such percentages rather than on a per head basis.*

* * * * * * *

SEC. 310. Whenever after full hearing upon a complaint made as provided in section 309, or after full hearing under an order for investigation and hearing made by the Secretary on his own initiative, either in extension of any pending complaint or without any complaint whatever, the Secretary is of the opinion that any rate, charge, regulation, or practice of a stockyard owner or market agency, for or in connection with the furnishing of stockyard services, is or will be [unjust, unreasonable, or discriminatory] *violative of section 304, 305, or 307*, the Secretary—

(a) May *in accordance with the standard set forth in section 305* determine and prescribe what will be the [just and reasonable] rate or charge, or rates or charges, to be thereafter in such case observed [as both the maximum and minimum] *as the maximum or minimum or both* to be charged, and what regulation or practice is or will be just, reasonable, and nondiscriminatory to be thereafter followed: *Provided, That the Secretary shall prescribe the rate or charge, or rates or charges, on a percentage or per head basis at the election of the stockyard owner or market agency, or on any other basis elected by the stockyard owner or market agency unless the Secretary finds such other basis to be violative of section 305*; and

(b) May make an order that such owner or operator (1) shall cease and desist from such violation to the extent to which the Secretary finds that it does or will exist; (2) shall not thereafter publish, demand, or collect any rate or charge for the furnishing of stockyard services [more or less than the rate or charge] *other than the rate or charge or rates or charges* so prescribed; and (3) shall conform to and observe the regulation or practice so prescribed.

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Calendar No. 977

95TH CONGRESS
2d Session

SENATE

REPORT
No. 95-1054

VETERANS DISABILITY COMPENSATION AND SURVIVORS BENEFITS IMPROVEMENTS ACT OF 1978

REPORT

OF THE

COMMITTEE ON VETERANS' AFFAIRS UNITED STATES SENATE

TO ACCOMPANY

S. 2828

JULY 31 (legislative day, MAY 17), 1978.—Ordered to be printed

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95TH CONGRESS
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SENATE

REPORT
No. 95-1054

VETERANS DISABILITY COMPENSATION AND SURVIVORS BENEFITS IMPROVEMENTS ACT OF 1978

JULY 31 (legislative day, MAY 17), 1978.—Ordered to be printed

Mr. CRANSTON, from the Committee on Veterans' Affairs, submitted the following

REPORT

[To accompany S. 2828]

The Committee on Veterans' Affairs, to which was referred the bill (S. 2828) to amend title 38, United States Code, to increase the rates of disability compensation for disabled veterans; to increase the rates of dependency and indemnity compensation for their surviving spouses and children; and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a committee substitute, and an amendment to the title, and recommends that the bill, as amended, do pass.

COMMITTEE AMENDMENTS

The amendments are as follow:

Strike out all after the enacting clause and insert the following:

That this Act may be cited as the "Veterans Disability Compensation and Survivors Benefits Improvements Act of 1978".

TITLE I—VETERANS DISABILITY COMPENSATION INCREASES AND OTHER IMPROVEMENTS

SEC. 101. (a) Section 314 of title 38, United States Code, is amended by—

(1) striking out in subsection (a) "$41" and inserting in lieu thereof "$44";
(2) striking out in subsection (b) "$75" and inserting in lieu thereof "$80";
(3) striking out in subsection (c) "$113" and inserting in lieu thereof "$121";
(4) striking out in subsection (d) "$155" and inserting in lieu thereof "$166";
(5) striking out in subsection (e) "$216" and inserting in lieu thereof "$232";
(6) striking out in subsection (f) "$272" and inserting in lieu thereof "$292";
(7) striking out in subsection (g) "$322" and inserting in lieu thereof "$346";
(8) striking out in subsection (h) "$373" and inserting in lieu thereof "$400";

(9) striking out in subsection (i) "$419" and inserting in lieu thereof "$450";

(10) striking out in subsection (j) "$754" and inserting in lieu thereof "$809";

(11) striking out in subsection (k) "$937" and "$1,312" each time they appear and inserting in lieu thereof "$1,005" and "$1,408", respectively;

(12) striking out in subsection (l) "$937" and inserting in lieu thereof "$1,005";

(13) striking out in subsection (m) "$1,032" and inserting in lieu thereof "$1,107";

(14) striking out in subsection (n) "$1,172" and inserting in lieu thereof "$1,258";

(15) striking out in subsections (o) and (p) "$1,312" each time it appears and inserting in lieu thereof "$1,408";

(16) striking out in subsection (r) "$563" and inserting in lieu thereof "$604"; and

(17) striking out in subsection (s) "$843" and inserting in lieu thereof "$905".

(b) Section 314(p) of such title (as amended by subsection (a)(15) of this section) is further amended by inserting before the semicolon a period and the following new sentence: "In the event the veteran has suffered the anatomical loss or loss of use, or a combination of anatomical loss and loss of use, of three extremities, the Administrator shall allow the next higher rate or intermediate rate, but in no event in excess of $1,408".

(c) The first sentence of section 314(r) of such title (as amended by subsection (a)(16) of this section), is further amended by—

(1) striking out "If" and inserting in lieu thereof "Subject to the limitations of section 3203(e) of this title, if";

(2) inserting "(1)" after "is in need of"; and

(3) striking out "subject to the limitations of section 3203(e) of this title" and inserting in lieu thereof "or (2) special aid and attendance, such veteran shall be paid, in addition to such compensation, an allowance of $900 per month, if the Administrator finds that such veteran, in the absence of such aid and attendance by another person, would require hospitalization, nursing home care, or other residential institutional care".

(d) The Administrator of Veterans' Affairs may adjust administratively, consistent with the increases authorized by this section, the rates of disability compensation payable to persons within the purview of section 10 of Public Law 85-857 who are not in receipt of compensation payable pursuant to chapter 11 of title 38, United States Code.

SEC. 102. Section 315(1) of title 38, United States Code, is amended by—

(1) amending clauses (A) and (B) to read as follows:

"(A) has a spouse, $87, plus $55 for each child, if any;

"(B) has no spouse, $87 for the first child, plus $55 for each additional child, if any;";

(2) striking out clauses (C) through (G);

(3) redesignating clauses (H), (I), and (J) as clauses (C), (D), and (E), respectively;

(4) striking out "$37" in clause (C), as redesignated by clause (3) of this section, and inserting in lieu thereof "$40";

(5) striking out "$83" in clause (D), as redesignated by clause (3) of this section, and inserting in lieu thereof "$89"; and

(6) striking out "$70" in clause (E), as redesignated by clause (3) of this section, and inserting in lieu thereof "$75".

SEC. 103. (a) Section 360 of title 38, United States Code, is amended by inserting "(a)" before "Where" and inserting at the end of such section the following new subsection:

"(b) Where any veteran has suffered the loss or loss of use of an extremity as a result of service-connected disability so as to entitle such veteran to a rating of not less than 40 per centum and has suffered the loss or loss of use of the paired extremity as a result of non-service-connected disability, not the result of the veteran's own willful misconduct, which would, if service-connected, entitle such veteran to a rating of not less than 40 per centum, the Administrator shall determine the percentage increase, if any, which would be added to the combined value of such disabilities if both were service-connected and independently rated, and shall, in the same manner in which the Administrator would add such percentage to the combined value of less than total service-connected disabilitles, add such precentage to the rating of such veteran's service-connected disability.".

(b) The catchline of section 360 of such title is amended to read as follows:

"§ 360. Special consideration for certain cases of blindness, bilateral kidney involvement, bilateral deafness, or the loss or loss of use of paired extremities".

(c) The table of sections at the beginning of chapter 11 of such title is amended by striking out

"360. Special consideration for certain cases of blindness or bilateral kidney involvement or bilateral deafness."

and inserting in lieu thereof.

"360. Special consideration for certain cases of blindness, bilateral kidney involvement, bilateral deafness, or the loss or loss of use of paired extremities.".

SEC. 104. Section 362 of title 38, United States Code, is amended by striking out "$203" and inserting in lieu thereof "$218".

TITLE II—DEPENDENCY AND INDEMNITY COMPENSATION INCREASES AND OTHER IMPROVEMENTS FOR SURVIVORS

SEC. 201. Section 411 of title 38, United States Code, is amended to read as follows:

"§ 411. Dependency and indemnity compensation to a surviving spouse

"(a) Dependency and indemnity compensation shall be paid to a surviving spouse, based on the pay grade of the person upon whose death entitlement is predicated, at monthly rates set forth in the following table:

"Pay grade:	*Monthly rate*	Pay grade:	*Monthly rate*
E–1	$297	W–4	$426
E–2	307	O–1	376
E–3	314	O–2	388
E–4	331	O–3	416
E–5	343	O–4	439
E–6	351	O–5	484
E–7	368	O–6	544
E–8	388	O–7	590
E–9	[1] 406	O–8	646
W–1	376	O–9	694
W–2	391	O–10	[2] 760
W–3	402		

"[1] If the veteran served as sergeant major of the Army, senior enlisted advisor of the Navy, chief master sergeant of the Air Force, sergeant major of the Marine Corps, or master chief petty officer of the Coast Guard, at the applicable time designated by sec. 402 of this title, the surviving spouse's rate shall be $437.

"[2] If the veteran served as Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations; Chief of Staff of the Air Force, or Commandant of the Marine Corps, at the applicable time designated by sec. 402 of this title, the surviving spouse's rate shall be $814.

"(b) If there is a surviving spouse with one or more children (of a deceased veteran) below the age of eighteen, the dependency and indemnity compensation paid monthly to the surviving spouse shall be increased by $87 for the first such child, plus $55 for each additional such child.

"(c) The monthly rate of dependency and indemnity compensation payable to a surviving spouse shall be increased by $89 if the spouse is (1) a patient in a nursing home or (2) helpless or blind, or so nearly helpless or blind as to need or require the regular aid and attendance of another person.

"(d) The monthly rate of dependency and indemnity compensation payable to a surviving spouse shall be increased by $45 if the spouse is so disabled as to be permanently housebound but does not qualify for the aid and attendance allowance under subsection (c) of this section. For purposes of this subsection, the requirement of 'permanently housebound' shall be met when the surviving spouse is substantially confined to such surviving spouse's house (ward or clinical areas, if institutionalized) or immediate premises by reason of a disability or disabilities reasonably certain to remain throughout such surviving spouse's lifetime.".

SEC. 202. Section 413 of title 38, United States Code, is amended by—

(1) striking out in clause (1) "$140" and inserting in lieu thereof "$150";

(2) striking out in clause (2) "$201" and inserting in lieu thereof "$216";

(3) striking out in clause (3) "$259" and inserting in lieu thereof "$278"; and

(4) striking out in clause (4) "$259" and "$52" and inserting in lieu thereof "$278" and "$56", respectively.

SEC. 203. Section 414 of title 38, United States Code, is amended by—

(1) striking out in subsection (a) "$83" and inserting in lieu thereof "$89";

(2) striking out in subsection (b) "$140" and inserting in lieu thereof "$150"; and

(3) striking out in subsection (c) "$71" and inserting in lieu thereof "$76".

SEC. 204. (a) Chapter 13 of title 38, United States Code, is amended by inserting after section 404 the following new section:

"§ 405. Special determinations

"(a) In any case under this chapter in which the Administrator is required to determine a number of months, the calendar month in which (1) a veteran is rated totally disabled, (2) a veteran died, and (3) a child will attain age 21, shall be considered as one full month.

"(b) In any case under this chapter where a monthly rate would contain a fraction of a dollar, such rate shall be fixed at the next higher dollar."

(b) The table of sections at the beginning of such chapter is amended by inserting

"405. Special determinations."

below

"404. Special provisions relating to surviving spouses.".

SEC. 205. (a) Chapter 13 of title 38, United States Code, is amended by inserting after section 411 the following new section:

"§ 411A. Benefits for surviving spouses of certain totally disabled veterans

"(a) Whenever any veteran dies, not as the result of the willful misconduct of such veteran or such veteran's spouse, and (1) at the time of death such veteran had a service-connected disability or disabilities rated as total without regard to any increase in the rating resulting from a determination in an individual case that such veteran was unemployable, and (2) the Administrator has not determined that such veteran's death resulted from a service-connected or compensable disability, benefits shall be paid to the surviving spouse as provided in subsection (b) of this section.

"(b)(1) In any case in which the service-connected disability or disabilities of such veteran had been so rated as total continuously for a period of twenty years or longer immediately prior to such veteran's death or had been so rated continuously during the period from the date of such veteran's discharge to the date of such veteran's death and such period was ten years or longer, benefits shall be paid to the surviving spouse of such veteran at the appropriate monthly rate provided for under section 411 or 412 of this title in the same manner and to the same extent as if the Administrator had determined that such veteran's death had resulted from a service-connected or compensable disability.

"(2) In any case in which the service-connected disability or disabilities of such veteran had been so rated as total continuously for a period not meeting the requirements of paragraph (1) of this subsection, benefits shall be paid to the surviving spouse of such veteran at the appropriate monthly rate provided for in section 411 or 412 of this title, in the same manner and to the same extent as if the Administrator had determined that the veteran's death resulted from a service-connected or compensable disability, except that—

"(A) the period for which such benefits shall be paid shall not exceed a number of months equal to the number of months the disability of such veteran was continuously so rated, or

"(B) the monthly rate of benefits shall be determined by multiplying the monthly rate which would otherwise be applicable under such section 411 or 412 (had the Administrator found that such veteran's death resulted from a service-connected or compensable disability) by the number derived by dividing (i) the number of months such veteran was continuously so rated by (ii) the number of months of remaining life expectancy (using standard mortality tables) of the surviving spouse at the time of such veteran's death,

whichever method of determining benefits the surviving spouse elects. An election to receive benefits under clause (A) or (B) of the first sentence of this paragraph shall be irrevocable if any benefits are paid pursuant to such an election. In no event shall the benefits payable under this paragraph exceed those which would be payable under such section 411 or 412 if the Administrator had determined that the veteran had died from a service-connected or compensable disability.

"(c) Surviving spouses receiving benefits under this section shall be entitled to all payments and the benefit of all other provisions of law under this title and other law, except benefits under sections 411 and 412 of this title, to which surviving spouses receiving dependency and indemnity compensation are entitled.".

(b) The table of sections at the beginning of such chapter is amended by inserting

"411A. Benefits for surviving spouses of certain totally disabled veterans."

below

"411. Dependency and indemnity compensation to a surviving spouse.".

SEC. 206. Section 412(b) of title 38, United States Code, is amended by striking out "In" and inserting in lieu thereof "Except in cases in which the surviving spouse is receiving benefits under section 411A(b)(2)(B) of this title, in".

SEC. 207. (a) Chapter 13 of title 38, United States Code, is amended by inserting after section 414 the following new section:

"§ 414A. Benefits for surviving children of certain totally disabled veterans

"(a) Whenever any veteran dies and (1) there is no surviving spouse, (2) at the time of death such veteran had a service-connected disability or disabilities rated as total without regard to any increase in the rating resulting from a determination in an individual case that such veteran was unemployable, and (3) the Administrator has not determined that such veteran's death resulted from a service-connected or compensable disability, benefits shall be paid to the surviving children (in equal shares) as provided in subsection (b) or (c) of this section, as appropriate, except that no benefits under this section shall be paid to any child if the veteran's death resulted from the willful misconduct of such child or the veteran.

"(b)(1) In any case in which the service-connected disability or disabilities of such veteran had been so rated as total continuously for a period of twenty years or longer immediately prior to such veteran's death or had been so rated continuously during the period from the date of such veteran's discharge to the date of such veteran's death and such period was ten years or longer, benefits shall be paid to the surviving children of such veteran at the appropriate rate provided for under sections 413 and 414 of this title in the same manner and to the same extent as if the Administrator had determined that such veteran's death had resulted from a service-connected or compensable disability.

"(2) In any case in which the service-connected disability or disabilities of such veteran had been so rated as total continuously for a period not meeting the requirements of paragraph (1) of this subsection, benefits shall be paid to the surviving child of such veteran in the same manner and to the same extent as if the Administrator had determined that the veteran's death resulted from a service-connected or compensable disability, except that the monthly amount payable to such child shall be determined by multiplying the monthly rate of dependency and indemnity compensation which would otherwise be payable under sections 413 and 414 of this title (had the Administrator found that such veteran's death resulted from a service-connected or compensable disability) by the number derived by dividing (A) the number of months such veteran was continuously so rated by (B) the number of months remaining from the date of the veteran's death until the child attains twenty-one years of age; but in no event shall the benefits payable under this paragraph exceed those which would be payable under sections 413 and 414 of this title if the Administrator had determined that the veteran had died from a service-connected or compensable disability.

"(c) In the case of any child of a deceased veteran described in subsection (a) of this section who became permanently incapable of self-support before attaining the age of eighteen, benefits shall be paid to or on behalf of such child at the rate provided under section 413 and, if applicable, section 414 of this title.

"(d) Surviving children receiving benefits under this section shall be entitled to all payments and the benefit of all other provisions of law under this title and other law, except benefits under sections 413 and 414 of this title, to which surviving children receiving dependency and indemnity compensation are entitled."

(b) The table of sections at the beginnng of such chapter is amended by inserting

"414A. Benefits for children of certain totally disabled veterans."

below

"414. Supplemental dependency and indemnity compensation to children.".

SEC. 208. The first sentence of section 907 of title 38, United States Code, is amended by—

(1) inserting "(1) $1,500, or (2)" after "exceeding"; and

(2) inserting before the period a comma and "whichever is the greater".

SEC. 209. Section 906(b) of title 38, United States Code, is amended by striking out "dying in the service, and".

TITLE III—MISCELLANEOUS PROVISIONS

SEC. 301. Section 109(b) of title 38, United States Code, is amended by inserting (1) before "Persons" in the first sentence thereof and inserting at the end thereof the following new paragraph:

"(2)(A) Any person who (i) after August 31, 1939, and before December 8, 1941, entered into the active service of the armed forces of any government allied with the United States during World War II, (ii) was a citizen of the United States at the time of entrance into such active service, and (iii) suffered a service-connected disability or disabilities during such service and before January 1, 1947, shall be entitled to the benefits of chapter 11 of this title at the same rates, in the same manner, and to the same extent as a veteran of the Armed Forces of the United States, except that any benefits payable monthly under such chapter shallbe reduced by the amount of any benefits received monthly (or, if payable other than monthly, by the prorated monthly amount) from such government on account of such disability. No such benefits shall be paid under authority of this paragraph to any person who is not a citizen and resident of the United States.

"(B)(i) The Administrator shall make an independent evaluation of any disability or disabilities compensable under subparagraph (A) of this paragraph.

"(ii) In the case of any person receiving benefits from such government which are based on a determination by such government that such person has suffered a disability during active service in the armed forces of such government, such disability shall be conclusively presumed to be service-connected for all purposes of subparagraph (A) of this paragraph.

"(iii) Each person applying for or receiving benefits under subparagraph (A) of this section shall furnish (I) an authenticated certification from the allied government concerned attesting to the service of such person in the active service of the armed forces of such government and to the disability or disabilities suffered by such person in such service, and (II) such other proofs as the Administrator shall require in addition thereto or (if such person is unable to obtain from such government such certification, in lieu thereof) including information concerning receipt of monetary benefits from such government.".

SEC. 302. Section 562 of title 38, United States Code, is amended by striking out "$100" and inserting in lieu thereof "$200".

SEC. 303. Section 1902(a) of title 38, United States Code, is amended by striking out "$3,300" and inserting in lieu thereof "$4,100".

SEC. 304. (a) The Administrator of Veterans' Affairs shall carry out, in consultation with the Secretary of Defense, a comprehensive study of the disability compensation awarded to, and the health-care needs of, veterans who are former prisoners of war. The Administrator shall include in such study—

(1) descriptions and analyses of the repatriation procedures for former prisoners of war, including physical examinations, and the adequacy of such procedures and the resultant medical records of former prisoners of war;

(2) the types and severity of disabilities that are particularly prevalent among former prisoners of war in various theaters of operation at various times;

(3) a description and analysis of procedures used, with respect to former prisoners of war, in determining eligibility for health-care benefits and in adjudicating claims for disability compensation, including an analysis of the current use of statutory and regulatory provisions specifically relating to former prisoners of war; and

(4) a comparison with the treatment of, and any special consideration accorded to, former prisoners of war under the veterans' benefits programs of governments which were allied with the United States.

(b) Not later than March 1, 1979, the Administrator shall report to the Congress and the President on the results of such study, together with the Administrator's recommendations as to administrative and legislative actions necessary to assure that former prisoners of war receive compensation and health-care benefits for all disabilities which may reasonably be attributed to their internment.

SEC. 305. The third paragraph of the first section of the Act entitled "An Act for the creation of an American Battle Monuments Commission to erect suitable memorials commemorating the services of the American soldier in Europe, and for other purposes", approved March 4, 1923 (36 U.S.C. 121), is amended by inserting immediately after the last sentence thereof the following new sentence: "Personnel employed as cemetery superintendents and assistant superintendents by the Commission shall be citizens of the United States."

SEC. 306. The Secretary of Defense shall have placed in the Trophy Hall of the Memorial Amphitheater at Arlington National Cemetery a memorial plaque suitable for display before an international audience which shall bear the following inscription: "The people of the United States of America pay tribute to those members of its Armed Forces who served honorably in Southeast Asia during the Vietnam conflict.". To further honor those members of the Armed Forces who lost their lives in hostile action in Southeast Asia during the Vietnam conflict, the Secretay of Defense shall have placed near such plaque in a suitable repository a display of the Purple Heart Medal and other medals, ribbons, and decorations associated with service in Southeast Asia during the Vietnam conflict.

SEC. 307. None of the provisions of, or amendments made by, this Act, other than amendments providing new spending authority, as defined in section 401(c)(2)(C) of the Congressional Budget Act of 1974 (Public Law 93-344), shall be deemed to authorize, directly or indirectly, the enactment of new budget authority.

TITLE IV—EFFECTIVE DATES

SEC. 401. (a) The amendments made by this Act to title 38, United States Code, shall become effective on October 1, 1978.

(b) All other provisions of this Act shall be effective on the date of enactment of this Act.

Amend the title so as to read:

A bill to amend title 38, United States Code, to increase the rates of disability compensation; to increase the rates of compensation for loss or loss or use of three extremities; to increase the aid and attendance allowance for certain totally disabled veterans; to increase the rates of compensation for veterans with dependent spouses and children; to increase the rates of compensation for veterans with certain service-connected and non-service-connected disabilities of paired extremities; to increase the rates of dependency and indemnity compensation for surviving spouses, surviving spouses with dependent children, and surviving children; to increase the rates of special pension for persons awarded the Medal of Honor; to provide for payment of special benefits to surviving spouses and children of certain totally disabled service-connected disabled veterans; to increase the amount paid as burial and funeral expenses in the case of a veteran's death from a service-connected disability; and to provide for the payment of disability compensation to certain American citizens who served during World War II in the armed forces of nations allied with the United States; to increase the automobile assistance allowance for certain disabled veterans; and to provide for the furnishing of memorial headstones or markers to commemorate veterans who die after being honorably discharged and whose remains are not recovered; to pay tribute to those members of the Armed Forces who served honorably in Southeast Asia during the Vietnam conflict; to require that only United States citizens be employed as superintendents and assistant superintendent of American Battle Monuments Commission cemeteries; and for other purposes.

INTRODUCTION

S. 2828 was introduced on April 5, 1978, by Senator Herman Talmadge, chairman of the Subcommittee on Compensation and Pension, at the request of the administration. As introduced, the bill provided for a 5.8-percent increase in the rates of disability compensation and dependency and indemnity compensation and made minor changes in the compensation and pension programs intended to facilitate their administration.

On June 22, 1978, Senator Alan Cranston, chairman of the Committee on Veterans' Affairs, submitted, with the cosponsorship of Senators Talmadge, Stone, Matsunaga, and Durkin, now joined by Senators Randolph, Stafford, Thurmond, and Hansen, Amendment No. 3067 to S. 2828.

On June 30, 1978, the Subcommittee on Compensation and Pension held hearings on S. 2828, Amendment No. 3067, and other bills relating to the compensation programs. Testimony was received from J. C. Peckarsky, Director of the Compensation and Pension Service of the Veterans' Administration, and other representatives of the VA, and representatives of The American Legion, the Veterans of Foreign Wars, Disabled American Veterans, Paralyzed Veterans of America, Veterans of World War I, Non-Commissioned Officers Association, and Military Widows.

Earlier, on June 15, 1978, the Subcommittee on Housing, Insurance, and Cemeteries held hearings on legislative issues relating to housing and cemetery and burial programs. Testimony was received on cemetery and burial issues from Senators Claiborne Pell and Dennis DeConcini, Congressman Edward Beard, Dorothy Starbuck, Chief Benefits Director of the VA, and other representatives of the VA, and representatives of the Veterans of Foreign Wars, Disabled American Veterans, Paralyzed Veterans of America, Continental Association of Funeral and Memorial Societies, Inc., and Wyoming Veterans Affairs Commission.

After reviewing the testimony received during the June 30 and July 15 hearings, the Committee met in open session on July 27, 1978, to consider S. 2828 and Amendment No. 3067 and unanimously voted to report S. 2828 with an amendment in the nature of a substitute (derived in part from the provisions of Amendment No. 3067, S. 3347, H.R. 11889, H.R. 11891, H.R. 12261, and H.R. 12257, and incorporating provisions adopted in lieu of H.R. 6501, H.R. 11888, and H.R. 11890) and a title amendment.

SUMMARY OF PROVISIONS

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Summary of Provisions

The proposed "Veterans Disability Compensation and Survivors Benefits Improvements Act of 1978" contains four titles: Veterans disability compensation increases and other improvements; Dependency and indemnity compensation increases and other improvements for survivors; Miscellaneous improvements; and Effective dates.

Title I: Veterans' Disability Compensation Increases and Other Improvements.—This title includes amendments to title 38, United States Code, which would:

(1) Provide a 7.3-percent cost-of-living increase for service-connected disabled veterans in basic compensation rates and in the rates payable for more severe disabilities.

(2) Provide an increase in the additional allowances for spouses and children paid to service-connected disabled veterans rated 50 percent disabled or more. The increased allowances would be as follows:

Veteran rated 100 percent with a spouse or child	$887 monthly.
Each child or each additional child	55 monthly.

Veterans rated 50 percent to 90 percent would receive such increased dependents' allowances at the following proportionate monthly rates:

Rating	Spouse or child	Each child or each additional child
50 percent	$43.50	$27.50
60 percent	52.20	33.00
70 percent	60.90	38.50
80 percent	69.60	44.00
90 percent	78.30	49.50

(3) Provide a 7.3-percent cost-of-living increase in the additional allowances for dependent parents and helpless spouses, paid to service-connected disabled veterans rated 50-percent disabled or more.

(4) Provide that a 100-percent service-connected disabled veteran who has suffered the loss or loss of use, or a combination of loss or loss of use, of three extremities shall be compensated at the next higher rate or intermediate rate, not to exceed $1,408.

(5) Provide that veterans entitled to the aid-and-attendance allowance under section 314(r) of title 38, United States Code, who are in need of special aid and attendance shall receive $900 per month for such purpose (in addition to other compensation) if the Administrator finds that, in the absence of care being provided by another person, the veteran would require hospital, nursing home, or other residential institutional care.

(6) Provide that a veteran who has suffered the service-connected loss or loss of use of one paired extremity entitling the veteran to a rating of 40 percent or more, and who has also suffered the non-service-connected loss or loss of use of the other paired extremity which, if service connected, would entitle the veteran to a rating of 40 percent or more, shall be entitled to compensation based on a rating increased by the same amount

that the rating would be increased by virtue of bilateral impa
ment if both disabilities were service-connected and would
result in total disability, but not including an increase for
non-service-connected disability itself.

(7) Provide for a 7.3-percent cost-of-living increase in
annual clothing allowance paid to certain seriously disab
veterans whose disability tends to tear or wear out their clothi

*Title II: Dependency and Indemnity Compensation and Other
provements.*—This title includes amendments to title 38, United Sta
Code, which would:

(1) Provide a 7.3-percent cost-of-living increase in dependen
and indemnity compensation (DIC) benefits payable to su
viving spouses of veterans who died as a result of service-co
nected disability.

(2) Provide an increase in the additional allowances paid
surviving spouses receiving DIC for dependent children,
follows:

One child	$
Each additional child	

(3) Provide for a "housebound" rate, at one-half the aid-an
attendance rate, for surviving spouses receiving DIC who are
disabled as to be substantially confined to their homes (ward
clinical aras if institutionalized) by reason of a disability re
sonably certain to be permanent.

(4) Provide for a 7.3-percent cost-of-living increase in DI
benefits for the children of veterans whose deaths were the resu
of service-connected disabilities, when no surviving spouse
entitled; when the child is age 18 to 22 and is attending an a
proved educational institution; or when the child became pe
manently incapable of self-support prior to reaching age 18.

(5) Provide for benefits under the DIC chapter (chapter 1
under three approaches: (A) at the full DIC rate to the survivo
of a veteran whose death has not been determined to be servic
connected and who had been rated totally disabled continuous
(i) for 20 or more years at the time of death, or (ii) for 10 or mo
years continuously since the date of discharge from active servic
and (B) to the surviving spouses of all other veterans who
the time of death were rated totally disabled on the followin
alternative bases, between which the surviving spouse coul
elect: (i) Payment at the full DIC rate for a period of time equ
to the period during which the veteran was so rated, or (i
monthly payments for life based on the amount payable unde
(i) spread out over the actuarially expected life of the survivin
spouse (the monthly amount being calculated by multiplyin
the applicable DIC rate by a number derived by dividing th
number of months the veteran was so rated by the number o
months of remaining life expectancy of the surviving spouse)
and (C) to the surviving children of veterans other than thos
described in (A) and (B) above, (i) at the full DIC rate to
child who became permanently incapable of self-support before
reaching the age of 18 or a child of a veteran who had been
rated totally disabled at the time of death continuously for a
number of months greater than the number of months then re-

maining until the child reaches age 21, and (ii) in all other cases, at a rate to be determined by multiplying the applicable DIC rate by the number derived by dividing the number of months the veteran was continuously rated totally disabled by the number of months remaining before the child reaches age 21.

(6) Increase the allowance for the funeral and burial expenses of a veteran who died from service-connected causes to $1,500, or the amount authorized under section 8134(a) of title 5, United States Code, in the cases of Federal employees who die from injuries sustained in the performance of duty, whichever is the greater.

(7) Authorize the provision of memorial markers for veterans whose remains are not recoverable.

Title III: Miscellaneous Provisions.—This title includes provisions which would:

(1) Amend title 38, United States Code, to provide that Americans who, while citizens of the United States, volunteered between September 1, 1939, and December 8, 1941, to serve in the armed forces of the allies of the United States during World War II and suffered service-connected disabilities during such service shall be entitled, while they are citizens and residents of the United States, to service-connected disability compensation in the same manner and to the same extent as veterans who served in the United States Armed Forces, reduced by the amount of benefits received from the allied government.

(2) Amend title 38, United States Code, to provide for a increase, from $100 per month to $200 per month, in the rate of special pension payable to recipients of the Congressional Medal of Honor.

(3) Amend title 38, United States Code, to provide for a cost-of-living increase, from $3,300 to $4,100, in the automobile assistance allowance for veterans with certain severe service-connected disabilities.

(4) Require the VA to conduct, in consultation with the Secretary of Defense, a comprehensive study on issues relating to disability compensation awarded to, and the health-care needs of, former prisoners of war, including repatriation procedures, disabilities particularly prevalent among former prisoners of war, VA procedures in adjudicating compensation claims and in determining health-care eligibility, a comparison with other allied governments' benefits programs for their former prisoners of war, and a rationale for the VA's current interpretation of applicable law and regulations respecting prisoner-of-war benefits; and to submit to the Congress and the President by March 1, 1979, a report on the results of that study, together with the VA's recommendations as to administrative and legislative actions necessary to assure that a former prisoner of war receives compensation and health-care benefits for all disabilities reasonably attributable to his or her internment.

(5) Amend the law establishing the American Battle Monuments Commission to require the Commission to hire only United States citizens as superintendents and assistant superintendents of ABMC cemeteries.

(6) Direct the Secretary of Defense to place, in the Memori Amphitheater in Arlington National Cemetery, a memori plaque honoring those members of the United States Arm Forces who served honorably in Southeast Asia during t Vietnam conflict.

(7) Clarify that none of the provisions of the Committee bi other than amendments providing for new spending authorit as defined in section 401(c)(2)(C) of the Congressional Budg Act of 1974, would authorizes directly or indirectly, the enac ment of new budget authority.

Title IV: Effective Dates.—This title provides that the amendmen made by the Committee bill to title 38, United States Code, would b effective on October 1, 1978, and that all other provisions would b effective upon enactment.

Discussion

TITLE I: IMPROVEMENTS IN DISABILITY COMPENSATION

Background

The Veterans' Administration disability compensation progra currently provides income for 2,241,105 veterans who have servic connected disabilities. This number is composed of disabled veterar with the following periods of service: 45,706 are disabled World W I veterans; 1,271,442 World War II veterans; 239,385 Korean-conflic veterans; and 482,836 Vietnam-era veterans. Compensation is pa according to the degree of disability. Section 355 of title 38, Unite States Code, provides that the ratings for disability, which range fro 10 to 100 percent, shall be based "as far as practical on the averag impairment of earning capacity resulting from such injury for civilia occupation." Other less tangible factors have also been traditionall considered by Congress in establishing compensation rates for thos who sustained disabilities in the service of their country.

The following table reveals average costs and caseloads for veterar and survivors:

TABLE 1.— AVERAGE COST AND CASELOAD OF VETERANS DISABILITY AND SURVIVOR COMPENSATION CASES

Total cost:	Fiscal year 1977			Fiscal year 1978 (estimated)			Fiscal year 1979 (estimated)		
	Average cases	Average cost	Total cost ($9,037,415)	Average cases	Average cost	Total cost ($9,614,394)	Average cases	Average cost	Total cost ($9,577,300)
Compensation (total)	2,606,948	$2,204	$5,745,896	2,613,715	$2,355	$6,155,982	2,613,520	$2,360	$6,167,534
Veterans (total)	2,241,105	2,097	4,700,497	2,249,405	2,241	5,040,110	2,250,005	2,244	5,048,165
Spanish-American War	4	6,246	25	3	6,333	19	3	6,333	19
Mexican border period	9	9,601	86	7	8,071	56	7	8,071	56
World War I	45,706	2,690	122,932	41,000	2,915	119,521	36,200	2,920	105,693
World War II	1,271,442	1,957	2,488,564	1,251,000	2,087	2,611,400	1,225,100	2,089	2,558,640
Korean conflict	239,385	2,368	566,829	239,200	2,521	603,099	239,000	2,522	602,830
Vietnam era	482,836	2,167	1,046,174	506,800	2,325	1,178,221	534,100	2,326	1,242,384
Peacetime service	201,723	2,359	475,887	211,395	2,497	527,794	215,595	2,498	538,543
Survivors (total)	365,843	2,858	1,045,399	364,310	3,063	1,115,872	363,515	3,079	1,119,369
Indian wars	1	3,161	3	1	3,161	3	1	3,161	3
Civil War	7	2,634	18	4	2,795	11	2	2,795	6
Spanish-American War	199	3,299	657	165	3,642	601	145	3,662	531
Mexican border period	3	3,535	11	3	3,535	11	2	3,535	7
World War I	33,570	3,333	111,894	32,400	3,532	114,433	31,400	3,538	111,105
World War II	185,183	2,453	454,179	180,837	2,623	474,418	177,175	2,629	465,781
Korean conflict	39,289	2,753	108,147	39,300	2,936	115,398	39,320	2,943	115,707
Vietnam era	59,564	3,450	205,517	63,100	3,732	235,475	66,570	3,738	248,856
Peacetime service	48,027	3,435	164,943	48,500	3,619	175,522	48,900	3,627	177,373

Source: Veterans' Administration, July 1978.

The Committee periodically reviews the service-connected disability compensation program to insure that the benefits authorized provide reasonable and adequate compensation for disabled veterans and their families.

Traditionally, review by Congress occurred biennially, but continuing inflation has led to review on an annual basis. Rates were adjusted in the 93d Congress, 1974 (Public Law 93–295), and in the 94th Congress, 1975 and 1976 (Public Laws 94–71 and 94–433). In the first session of the 95th Congress, Public Law 95–117 provided an increase of 6.6 percent in the rates of disability compensation and dependency and indemnity compensation, and in the annual clothing allowance, effective October 1, 1977.

Increases in Disability Compensation Rates

Based on the changes in the Consumer Price Index from the effective date of the last increase (October 1, 1977), to date, together with projected increases to October 1, 1978, as estimated by the Congressional Budget Office, a 7.3-percent increase in benefits will be required to protect the purchasing power of benefits paid to disabled veterans and their survivors.

Disabled veterans and their survivors during the past year have continued to experience an increase in the cost of living, particularly in the first half of 1978. In January of this year, the VA originally proposed an increase of 5.8 percent in the applicable rates, but, on July 27, 1978, advised the Committee that OMB was projecting a 6.9-percent increase in the Consumer Price Index for the period October 1977, to October 1978. The Congressional Budget Office advised the Committee on July 25, 1978, that, based on CBO's July 1978, economic projections, CBO's estimate of the increase in the Consumer Price Index for the period from October 1977, to October 1978, was 7.3 percent.

The following table shows changes in the Consumer Price Index from January 1975, to June 1978:

TABLE 2.—U.S. DEPARTMENT OF LABOR, BUREAU OF LABOR STATISTIC CONSUMER PRICE INDEX

[1967=100]

	1975	1976	1977	1978
January	156.1	166.7	175.3	186.9
February	157.2	167.1	177.1	188.3
March	157.8	167.5	178.2	189.8
April	158.6	168.2	179.6	191.3
May	159.3	169.2	180.6	193.2
June	160.6	170.1	181.8	195.1
July	162.3	171.1	182.6	----
August	162.8	171.9	183.3	----
September	163.6	172.6	184.0	----
October	164.6	173.3	184.5	----
November	165.6	173.8	185.4	----
December	166.3	174.3	185.1	----

The following table shows the current rates for disability compensation and those proposed by S. 2828, as reported, together with the number of veterans receiving compensation in each category:

TABLE 3.—COMPARISON OF COMPENSATION RATES UNDER PRESENT LAW AND UNDER S. 2828 AS REPORTED

	Increases		Number of veterans
	From—	To—	
Percentage of disability or subsection under which payment is authorized:			
(a) 10 percent	$41	44	876, 120
(b) 20 percent	75	80	352, 472
(c) 30 percent	113	121	314, 863
(d) 40 percent	155	166	183, 814
(e) 50 percent	216	232	114, 499
(f) 60 percent	272	292	122, 757
(g) 70 percent	322	346	86, 893
(h) 80 percent	373	400	40, 479
(i) 90 percent	419	450	13, 861
(j) 100 percent	754	809	122, 021
Higher statutory awards for certain multiple disabilities:			
(k) (1) Additional monthly payment for anatomical loss of use of any of these organs: 1 foot, 1 hand, blindness in 1 eye (having light perception only), 1 or more creative organs, both buttocks, organic aphonia (with constant inability to communicate by speech), deafness of both ears (having absence of air and bone conduction), for each loss	56	56	
(2) Limit for veterans receiving payments under (a) to (j) above	937	1, 005	85, 843
(3) Limit for veterans receiving payments under (j) to (n) below	1, 312	1, 408	
(l) Anatomical loss or loss of use of both hands, both feet, 1 foot and 1 hand, blindness in both eyes (5/200 visual acuity or less), permanently bedridden or so helpless as to require regular aid and attendance	937	1, 005	6, 730
(m) Anatomical loss or loss of use of 2 extremities so as to prevent natural elbow or knee action with prosthesis in place, blind in both eyes, either with light perception only or rendering veterans so helpless as to require regular aid and attendance	1, 032	1, 107	2, 831
(n) Anatomical loss of 2 extremities so near shoulder or hip as to prevent use of prosthesis or anatomical loss of both eyes	1, 172	1, 258	367
(o) Disability under conditions entitling veteran to 2 or more of the rates provided in (l) through (n), no condition being considered twice in the determination, or deafness rated at 60 percent or more (impairment of either or both ears service connected) in combination with total blindness (5/200 visual acuity or less)	1, 312	1, 408	49
(p) (1) If disabilities exceed requirements of any rates prescribed, Administrator of VA may allow next higher rate or an intermediate rate, but in no case may compensation exceed	1, 312	1, 408	
(2) Blindness in both eyes (with 5/200 visual acuity or less) together with (a) bilateral deafness rates at 40 percent or more disabling (impairment of either or both ears service connected) next higher rate is payable, or (b) service connected total deafness of 1 ear next intermediate rate is payable, but in no event may compensation exceed	1, 312	1, 408	6, 866
(q) [This subsection repealed by Public Law 90-493.]			
(r) If veteran entitled to compensation under (o) or to the maximum rate under (p), and is in need of regular aid and attendance, he shall receive a special allowance of the amount indicated at right for aid and attendance in addition to (o) or (p) rate	563	604	8, 556
(s) Disability rated as total, plus additional disability independently ratable at 60 percent or over, or permanently housebound	843	905	6, 949

Source: Veterans' Administration, July 1978.

For a broader perspective, the following table shows statutory increases in the compensation program since 1957:

TABLE 4.—HISTORY OF WARTIME SERVICE CONNECTED COMPENSATION INCREASES, 1957 TO PRESENT

Sec. 314, title 38, subpar.—	Public Law 85-168, Oct. 1, 1957	Plus percent increase equals—	Public Law 87-645, Oct. 1, 1962	Plus percent increase equals—	Public Law 89-311, Oct. 31, 1965	Plus percent increase equals—	Public Law 90-493, Jan. 1, 1969	Plus percent increase equals—	Public Law 91-376, July 1, 1970	Plus percent increase equals—
(a)	$19	5.3	$20	5.0	$21	9.5	$23	8.7	$25	12.0
(b)	36	5.6	38	5.3	40	7.5	43	7.0	46	10.8
(c)	55	5.5	58	3.4	60	8.3	65	7.7	70	10.0
(d)	73	5.5	77	6.6	82	8.5	89	7.9	96	10.4
(e)	100	7.0	107	5.6	113	8.0	122	10.7	135	10.3
(f)	120	6.7	128	6.3	136	8.1	147	10.9	163	9.8
(g)	140	6.4	149	7.4	161	8.1	174	10.9	193	9.8
(h)	160	6.3	170	9.4	186	8.1	201	10.9	223	9.9
(i)	179	6.7	191	9.4	209	8.1	226	10.6	250	10.0
(j)	225	11.1	250	20.0	300	33.3	400	12.5	450	10.0
(k)										
(l)	309	10.0	340	17.6	400	25.2	500	12.0	560	10.0
(m)	359	8.6	390	15.4	450	22.2	550	12.0	616	10.1
(n)	401	9.7	440	19.3	525	18.2	625	12.0	700	10.0
(o)	450	16.7	525	14.3	600	16.7	700	12.0	784	9.0
(p)	450	16.7	525	14.3	600	16.7	700	12.0	784	9.9
(q)										
Subpar. (r) "A and A" nonhospitalization, Public Law 85-782, effective Oct. 1, 1958	150	33.3	200	25.0	250	20.0	300	12.0	336	10.1
Subpar. (S) (housebound cases) Public Law 86-663, effective Sept. 1, 1960	265	9.4	290	20.7	350	28.8	450	12.0	504	9.9
38 U.S.C. 362										

Sec. 314, title 38, subpar.—	Public Law 92-328, Aug. 1, 1972	Plus percent increase equals—	Public Law 93-295, May 1, 1974	Plus percent increase equals—	Public Law 94-71 Aug. 1, 1975	Plus percent increase equals—	Public Law 94-433, Oct. 1, 1976	Plus percent increase equals—	Public Law 95-117, Oct. 1, 1977	Percent increase from Jan. 1, 1969
(a)	$28	15	$32	9.4	$35	8.6	$38	6.6	$41	78.3
(b)	51	15	59	10.2	65	7.7	70	6.6	75	74.4
(c)	77	15	89	10.1	98	8.2	106	6.6	113	73.9
(d)	106	15	122	9.8	134	8.2	145	6.6	155	74.2
(e)	149	15	171	9.9	188	8.0	203	6.6	216	77.1
(f)	179	18	211	11.9	236	8.1	255	6.6	272	85.0
(g)	212	18	250	12.0	280	7.9	302	6.6	322	85.1
(h)	245	18	289	12.1	324	8.0	350	6.6	373	85.6
(i)	275	18	325	12.0	364	8.0	393	6.6	419	85.4
(j)	493	18	584	12.2	655	7.9	707	6.6	754	88.5
(k)	.....	10	52	0	52	8.0	879	6.6	56	19.2
(l)	616	18	727	12.0	814	8.0	879	6.6	937	87.4
(m)	678	18	800	12.0	896	8.0	968	6.6	1,032	87.6
(n)	770	18	909	12.0	1,018	8.0	1,099	6.6	1,172	87.5
(o)	862	18	1,017	12.0	1,139	8.1	1,231	6.6	1,312	87.4
(p)	862	18	1,017	12.0	1,139	8.1	1,231	6.6	1,312	87.4
(q)	.....	.....	.....	.....	.....	.....	.....	.....	.....	87.7
Subpar. (r) "A and A" nonhospitalization, Public Law 85-782, effective Oct. 1, 1958	370	18	437	11.9	489	0	528	6.6	563	
Subpar. (s) (housebound cases) Public Law 86-663, effective Sept. 1, 1960	554	18	654	11.9	732	7.7	791	6.6	843	87.3
38 U.S.C. 362	.....	.....	.....	.....	.....	8.6	190	6.6	203	[1] 35.3

[1] From Aug. 1, 1972.

Source: Veterans' Administration, July 1978.

Increase in Dependents' Allowances to Veterans

The Committee bill incorporates a provision of Amendment No. 3067 relating to dependents and allowances (to S. 2828 as introduced), in order to increase substantially the dependents' allowances paid to veterans.

Under current law, veterans with service-connected disabilities rated from 50 to 100 percent receive additional compensation for each dependent. The amounts payable to veterans who are rated at 50- to 90-percent disabled are prorated according to the degree of disability—for example, a veteran rated 50-percent disabled receives 50 percent of the amount payable to a veteran rated 100-percent disabled with the same number and type of dependents.

Allowances are payable to such veterans for spouses, children, and dependent parents. If the veteran's spouse is severely disabled, or if the veteran has a child 18 or over attending an approved educational institution, an additional allowance is payable to the veteran.

The following table shows, in part, the current schedule of monthly allowances for veterans rated from 50- to 100-percent disabled.

TABLE 5.—SELECTED DEPENDENTS' ALLOWANCES UNDER CURRENT LAW

	100 percent	90 percent	80 percent	70 percent	60 percent	50 percent
Spouse	$46	$41.40	$36.80	$32.20	$27.60	$23.00
Spouse and child	77	69.30	61.60	53.90	46.20	38.50
Spouse and 2 children	98	88.20	78.40	68.60	58.80	49.00
Spouse and 3 children	120	108.00	96.00	84.00	72.00	60.00
Each additional child	22	19.80	17.60	15.40	13.20	11.00
No spouse, but 1 child	30	27.00	24.00	21.00	18.00	15.00
2 children	52	46.80	41.60	36.40	31.20	26.00
3 children	77	69.30	61.60	53.90	46.20	38.50
Each additional child	22	19.80	17.60	15.40	13.20	11.00

The dependents' allowances payable to veterans and survivors differ substantially in each of the four major title 38 programs providing for such allowances: GI Bill educational assistance (chapter 34), service-connected disability compensation (chapter 11), dependency and indemnity compensation (DIC) (chapter 13), and need-based pension (chapter 15).

In preparing the Committee pension-reform measure, S. 2384, for introduction, the Committee reviewed the dependents' allowances payable to veterans and survivors in each of these four programs. The schedule of benefits and the amounts payable differ substantially in each program. For example, a married veteran attending school full time under the GI Bill receives an additional $59 per month for his or her spouse and an additional $52 per month for one child, plus $26 for each additional child. Under current law, a 100-percent service-connected disabled veteran who is married receives $46 per month for his or her spouse and $31 per month for one child, plus $21 for a second child, and $22 per month for each additional child. A surviving spouse receiving DIC receives $33 per month for each dependent child. The additional pension payable to a married veteran cannot exceed $15 per month for a spouse plus $5 per month for each dependent child up to a maximum of two.

One of the major provisions of S. 2384, the Committee-reported pension-reform measure (S. Rept. No. 95–1016), would establish a

system of increased payments for the support of dependents more realistically in line with the actual costs of support than the allowances provided under current law in any of these programs. Thus, S. 2384 would provide for an increase in the basic income standard of $87 per month if the veteran is married, with $55 per month added for each dependent child. The comparable amounts under current law are $15 per month for a spouse and $5 per month for each child up to two. The income standards applicable to surviving spouses would be similarly increased if there are dependent children.

The purposes of the four major VA programs under which dependents' allowances are authorized differ, of course, but in each program the dependents' allowance is intended to defray the costs of supporting the veteran's or surviving spouse's dependents. In the case of service-connected disabled veterans and surviving spouses receiving DIC, simple fairness requires eliminating the disparities between the compensation program and the proposed pension program by increasing the dependents' allowances payable to 100-percent service-connected disabled veterans and DIC beneficiaries to the levels provided for under the Committee bill is clearly warranted, as well as making proportionate increases to those rated 50 to 90 percent.

Thus, under the Committee bill, the dependents' allowances paid to veterans would be substantially increased—by an average of about 50 percent—in order to bring those allowances more realistically in line with the cost of supporting dependents. In addition, the Committee bill simplifies the schedule of benefits. The following table shows the dependents' allowances provided for under the Committee bill:

TABLE 6.—DEPENDENTS' ALLOWANCES UNDER S. 2828 AS REPORTED

	Monthly
Veterans rated 100 percent with a spouse, or a child but no spouse	$87
Each child or each additional child	$5

The following proportionate rates for veterans rated 50 to 90 percent disabled:

Rating	One dependent (spouse or child)	Each additional dependent (child)
50 percent	$43.50	$27.50
60 percent	52.20	33.00
70 percent	60.90	38.50
80 percent	69.60	44.00
90 percent	78.30	49.50

Date supplied by the VA indicate that about 80 percent of all veterans rated 50- to 100-percent disabled have dependents. The following table indicates the number of veterans in each category and the 1977 costs of the compensation payable to those veterans for dependents follows:

TABLE 7.—VETERANS IN RECEIPT OF COMPENSATION WHO HAVE DEPENDENTS

Veterans with dependents	Number	1977 costs (in millions)
Veterans rated 100 percent	75,660	$73.2
Veterans rated 90 percent	11,773	8.2
Veterans rated 80 percent	33,999	21.8
Veterans rated 70 percent	67,272	41.9
Veterans rated 60 percent	102,128	50.2
Veterans rated 50 percent	89,975	23.2
Total	380,807	218.5

DEPENDENTS

Spouses	357,041
Children	328,816
Parents	13,193
Total	699,050

Source: Veterans' Administration, July 1978.

Veterans receiving dependents' allowances for a dependent parent, a helpless spouse, or a child in school, would receive a 7.3-percent increase in those allowances, consistent with the cost-of-living increase in other compensation rates.

Increase in Compensation for Loss or Loss of Use of Three Extremities

The bill incorporates a provision, derived from Amendment No. 3067 and section 104 of H.R. 11886, passed by the House of Representatives on June 28, 1978, relating to veterans who have lost or lost the use of three extremities, in order to provide that such a veteran shall be compensated at the next rate or intermediate rate higher than his or her present compensation rate.

Under current law, service-connected disabled veterans rated at 100 percent may be entitled to additional compensation for certain permanent, severe disabilities, such as unrestorable blindness and paraplegia and combinations of disabilities, as specified in the applicable sections of chapter 11 of title 38, United States Code. For example, a veteran who has suffered the service-connected loss of use of both feet is compensated at the "l" rate—subsection (l) of section 314 of title 38. A veteran who has suffered the service-connected loss of both lower extremities at a level preventing natural knee action with prosthesis in place is compensated at the "m" rate—subsection (m) of section 314. A veteran who has lost both lower extremities so near the hip as to prevent the use of a prosthetic appliance is compensated at the "n" rate—subsection (n) of section 314. A veteran whose disabilities are such that he or she would be entitled to two or more of the rates under (l) through (n) is compensated at the "o" rate—subsection (o) of section 314—which is the maximum rate, currently $1,312 per month.

Subsection (p) provides that the next higher rate or an intermediate rate—established by regulation—may be allowed if the disabilities exceed those specified in subsection (l), (m), or (n). The veteran may also be entitled to a "k" award—subsection (k) of section 314—for certain specific disabilities.

Any veteran compensated at the "o" rate, or paid at the maximum rate authorized under subsection (p) of section 314, who is in need of regular aid and attendance, may be entitled to an additional $563 per month, under subsection (r) of section 314.

However, no specific recognition is granted under current law to veterans who have suffered the cumulative impairments of a triple amputation, loss of use of three extremities, or any combination of amputation or loss of use of three extremities. Depending on the severity of the disability involved, these veterans are compensated at the following rates:

	Monthly
"l-½" (intermediate rate)	$985
If rated "l-½" (intermediate rate) + "k"	1,041
If rated "m" + "k"	1,088
If rated "m ½" (intermediate rate) + "k"	1,158
If rated "n" + "k"	1,228

A comparison of the rates payable to veterans who have incurred a double amputation or loss of use of two extremities, and who have incurred a triple amputation or loss of use of three extremities, indicates that the level of compensation payable to those in the latter group is, on the average, only about 9 percent higher than that payable to veterans in the former group. This differential is insufficient to compensate these veterans adequately for their loss of three extremities. Thus, the Committee bill would increase—to the next higher rate or intermediate rate—the rate of compensation payable to these veterans, in order to insure that they are adequately compensated for the cumulative impairments attributable to their disabilities. This provision would also insure that veterans in this group who require regular aid and attendance are, in appropriate cases, entitled to the aid-and-attendance allowance rate under subsection (r) of section 314.

About 727 veterans would be eligible for the new rate.

Special Aid and Attendance Allowance for Certain 100-Percent Service-Connected Disabled Veterans

The Committee bill would provide for a monthly special aid and attendance allowance of $900 for a veteran whose disabilities are so severe that in the absence of care by another person the veteran would require hospital, nursing home, or other residential institutional care.

Under current law, a veteran compensated at the "o" rate or the maximum "p" rate may be eligible for additional compensation of $563 per month if he or she is in need of "regular aid and attendance". These "o" and "p" rates provide increased compensation to 100-percent service-connected disabled veterans with certain very severe multiple disabilities, such as those who are both blind and deaf and those who are paralyzed and blind, and those who are quadriplegic. Thus, the Committee bill would provide for an increased aid-and-attendance allowance of $900 per month—$10,800 per year—for veterans who are compensated at the "o" and maximum "p" rates and who require such special aid and attendance. H.R. 11891, passed by the House on July 18, 1978, contains a similar provision.

The current amount of $563 per month—$6,756 per annum—is insufficient to pay for adequate aid-and-attendance-type care in some cases. Thus, the provision for the higher rate in the Committee bill would assist some veterans who cannot survive away from a hospital or other institution without substantial daily personal care provided by another person at home. The Committee believes strongly that it is very desirable to enable such very seriously disabled veterans to reside in their own homes, rather than in institutions, if the nature of their disabilities is such that they are able to live at home with the aid and attendance of another person.

In the Committee's view, however, the higher aid-and-attendance allowance would be reserved for those situations in which it is clear, under all the facts and circumstances, that the nature of the veteran's disabilities is such that he or she requires the substantial daily aid and attendance of another person. In many such cases, of course, the attendance of another person would be required at many times during the day to assist the veteran with basic necessities such as eating, evacuation, turning over in bed, taking medication, and the like. In other cases, the personal attendance might not be required during all 24 hours of every day, but would still be necessary for a substantial portion of those hours. In all cases in which this special allowance is being paid, it should be determined that the veteran is actually receiving substantial actual and direct personal care on a daily (or very nearly daily) basis. Otherwise, in the Committees' view, the determination that institutionalization would otherwise be necessary could not reasonably be made.

The Committee also notes that the impact on different individuals of the very serious disabilities which authorize the payment of compensation at the "o" and "p" rates varies from case to case. In some cases, veterans who are paraplegic, quadriplegic, or blind and deaf, or who have suffered multiple amputations, have adapted most remarkably and well to the incursions of those disabilities into the routines of daily life—eating, sleeping, moving about, managing one's affairs, attending to one's own other personal needs, and the like. In individual cases, self-motivation, the aid of families, professional rehabilitative care, and the assistance of mechanical devices, have enabled veterans to overcome, to some extent, the impact of their disabilities. Generally, these are not persons who would require the new allowance. Nevertheless, even in such cases, it is entirely reasonable to expect that, from time to time, such a veteran's disabilities would result in substantial incapacitation—and the veteran would be forced to seek institutional care even though he or she would prefer to remain at home. In such cases, the Committee strongly suggests that the VA assist the veteran through payment of the higher aid-and-attendance allowance during that period—if, under the individual circumstances, the veteran believes that he or she would be more comfortable at home and, in the opinion of the veteran's physician, substantial daily care at home would suffice to avoid hospital, nursing home, or other residential institutional care that otherwise would be indicated.

Special Consideration for Veterans With Partly Non-Service-Connected Impairments of Paired Extremities

Under section 360 of title 38, three groups of veterans with bilateral disabilities are paid at the 100-percent rate even though part of their disability is non-service-connected. In each of these three groups, the veteran has sustained a service-connected loss and a non-service-connected loss. The three groups are—

(1) service-connected blindness of one eye and non-service-connected blindness of the other eye;

(2) service-connected loss or loss of use of one kidney and non-service-connected severe involvement of the other kidney resulting in total disability; and

(3) service-connected total deafness in one ear and non-service-connected total deafness in the other ear.

The thread tying those three categories together is total impairment of an irreplaceable or unrestorable function—vision, hearing, and kidney function. The effect of existing law is to compensate those veterans as if the entire bilateral organic impairment were service connected. The VA interprets this provision as making those veterans eligible for other benefits available to 100-percent service-connected disabled veterans, for example, dependents' allowances at the maximum rate and increased compensation under sections 315 (k) through (p), where applicable.

The Committee bill would amend section 360 to provide that a veteran who has suffered the service-connected loss or loss of use of one paired extremity, entitling the veteran to a rating of 40 percent or more, and who has also suffered non-service-connected loss or loss of use of the other paired extremity—which if service-connected would itself be rated at least at 40 percent—would be entitled to a percentage increase in his or her rating equal to the same amount that the rating would be increased by virtue of bilateral impairment if both disabilities were service connected, but less than totally disabling.

The argument that the bilateral loss is particularly severe in such cases finds support in the VA's regulation establishing a rating schedule for entirely service-connected "paired extremity" situations. The "bilateral factor", found in section 4.26 of title 38 of the Code of Federal Regulations (38 CFR 4.26), provides for a rating for less-than-total impairments of paired extremities higher than the combined rating for each disability would produce. It recognizes the increased disability resulting from the impairment of paired extremities and is applicable only to that particular situation.

For example, consider a veteran who has suffered the service-connected partial impairment of both hands, each of which would be independently rated at 30 percent. Under the schedule of rating disabilities, the 30-percent ratings, combined, would be 51, and the "bilateral factor", 10 percent of 51, or 5.1, would be added to make 56.1, which would then be rounded to 60, so that the final disability rating would be 60 percent. Under the Committee bill, this principle would be similarly applied. For example, consider a veteran who has suffered a service-connected below-the-knee amputation, which would be rated at 40 percent, and a non-service-connected below-the-knee amputation as well. The combined value of the "paired" disabilities would be 64, and the addition to the veteran's service-connected rating by virtue of the "bilateral factor", would be 6.4—so that the final rating would be 40 plus 6.4, or 46.4, which would be rounded to 50 percent. Such a veteran would then become entitled—as would others whom this provision is intended to benefit—not only for increased compensation payments by virtue of this provision, but also for proportionate increases in cases in which the veteran has dependents.

In the case of service-connected and non-service-connected paired-extremity disabilities, had it not been for the service-connected loss of the one extremity, the veteran would not, after suffering the non-service-connected loss of the paired extremity, be bilaterally impaired. In the Committee's view, the application of the bilateral factor to

these situations of mixed service-connected and non-service-connected disabilities would not dilute the concept of service connection; nor would it directly compensate the veteran for a non-service-connected disability or create a precedent for very costly extensions of cumulative non-service-connected and service-connected disabilities for compensation purposes. Rather, it would recognize the risk of a severely disabling condition—bilateral impairment—to which the service-connected disability subjected the veteran, and, if the risk materializes, provides an appropriate additional measure of compensation.

On May 23, 1977, the House passed H.R. 6501, a bill to extend the bilateral-impairment principle of section 360 to veterans with so-called paired extremity losses—that is, the service-connected loss or loss of use of one extremity—such as an arm or a leg or a hand or a foot—and the loss or loss of use of the second paired extremity from non-service-connected causes, the combination of which renders the veteran totally disabled. A counterpart bill, S. 379, was introduced by Senator Williams on January 19, 1977.

The Committee has adopted the approach in the Committee bill as preferable to treating the mixed service-connected/non-service-connected disabilities as totally service-connected and thus affording a veteran in this situation the benefits provided to a veteran whose disabilities are entirely service connected. Also, the Committee bill would apply the bilateral factor to permit increased benefits for those veterans with paired service-connected/non-service-connected extremity disabilities whose cumulative disabilities do *not* render them totally disabled. The Committee believes that these veterans are also deserving of the special consideration which the Committee bill would provide for them.

Increase in Annual Clothing Allowance

The Committee bill would provide for an increase of 7.3 percent in the annual clothing allowance, from $203 to $218, commensurate with the rate increases being provided for the compensation and DIC programs. Increasing the clothing allowance by this modest amount, $15, is justified by the projected rise in the Consumer Price Index between October 1, 1977, and October 1, 1978.

Under current law (section 362 of title 38), a special clothing allowance is provided to veterans whose service-connected disabilities require them to wear or use a prosthetic or orthopedic appliance which tends to wear out or tear their clothing. In 1971, in Public Law 92–329, Congress first authorized an annual clothing allowance (of $150) for these veterans. Prior to its enactment, the Administrator was authorized to furnish "special clothing" necessitated by the wearing of prosthetic appliances. However, the law did not authorize the replacement of conventional clothing subjected to extraordinary wear and tear.

Congress has acted in recent years to assure that the clothing allowance keeps pace with amount of inflation; and in the first session of the 95th Congress, as part of Public Law 95–117, an increase of 6.6-percent was authorized, consistent with the compensation cost-of-living increase provided for under that 1977 public law.

In 1978, 53,486 veterans are receiving clothing allowances. In the report accompanying the 1977 compensation legislation (S. Rept.

No. 95–416 accompanying H.R. 1862), the Committee expressed its approval of the VA's outreach efforts in 1975 and 1976 to contact potentially eligible veterans, and it intends that the VA continue its outreach efforts to identify and communicate with all those disabled veterans who are eligible for the allowance but who have not yet applied for it.

TITLE II: DEPENDENCY AND INDEMNITY COMPENSATION INCREASES AND OTHER IMPROVEMENTS FOR SURVIVORS

The Committee bill also would provide for significant improvements in the dependency and indemnity compensation program authorized under chapter 13 of title 38 for the survivors of veterans who died as the result of service-connected disabilities; for a new program—to be known as section 411A and 414A benefits—for the survivors of certain veterans rated totally disabled at the time of death; and for improvements in the burial benefits program under chapter 23.

Increases in Dependency and Indemnity Compensation Rates

Background

The dependency and indemnity compensation (DIC) program, which supplanted the earlier death compensation program, was established in 1956 with the enactment of the Servicemen's and Veterans' Survivor Benefits Act (Public Law 84–881).

DIC is paid to the survivors—surviving spouses, unmarried children under the age of 18, as well as certain helpless children, children between the ages of 18 and 23 who are enrolled in school, and certain needy parents—of servicemen or veterans who died on or after January 1, 1957, from: (1) a disease or injury incurred or aggravated in line of duty while on active duty or active duty training; or (2) an injury incurred or aggravated in line of duty while on inactive duty training; or (3) a disability compensable under laws administered by the VA.

Surviving spouses, children, and parents who are receiving death compensation by reason of death occurring before January 1, 1957, may elect to receive DIC benefits in lieu of death compensation. Once they so elect, however, they cannot thereafter receive death compensation.

DIC is paid to surviving spouses at rates determined by the pay grade—service rank—of the deceased veteran. Children become entitled to DIC where there is no surviving spouse, or where the child has become permanently incapable of self support before reaching the age of 18, or is age 18 to 23 and pursuing an approved course of education. Unlike the DIC program for surviving spouses and children, parents' DIC [1] is a need-based program in the sense that parents whose annual countable incomes exceed specific income limitations are not eligible for benefits.

Cost-of-living increase

The Committee bill would provide a uniform cost-of-living increase of 7.3 percent in DIC rates for surviving spouses and

[1] The Committee pension reform bill, S. 2384, reported on July 17 (S. Rept. No. 95–1016), would restructure the parents' DIC program along the lines of the improved pension program in that measure.

children, the same rate of the compensation increase provided service-connected disabled veterans under title I of the Committee bill. Additional allowances for surving spouses in need of aid and attendance, helpless children, children between the ages of 18 and 23 attending school, and surviving spouses and dependent parents in receipt of death compensation and in need of regular aid and attendance, would also be increased by 7.3 percent. The following table shows a comparison of those rates, in part, under current law with the rates provided for under the Committee bill:

TABLE 8.—COMPARISON OF MONTHLY DIC RATES UNDER PRESENT LAW AND S. 2828 AS REPORTED

	From—	To—		From—	To—
Pay grade:			Pay grade:		
E-1	$277	$297	W-4	$397	$426
E-2	286	307	O-1	350	376
E-3	293	314	O-2	362	388
E-4	311	334	O-3	388	416
E-5	320	343	O-4	409	439
E-6	327	351	O-5	451	484
E-7	343	368	O-6	507	544
E-8	362	388	O-7	550	590
E-9	378	406	O-8	602	646
W-1	350	376	O-9	647	694
W-2	364	391	O-10	708	760
W-3	375	402			

	From—	To—
Surviving spouse in need of regular aid and attendance	$83	$89
Surviving child (where no surviving spouse is entitled)	140	150
2 such children [1]	201	216
3 such children	259	278
More than 3 children, addition for each additional child	52	56
Addition if child is helpless	83	89
Helpless child, where surviving spouse is also entitled	140	150
Child attending school	71	76

[1] If there is more than 1 surviving child, an equal share of the total amount is paid to each child

Increased Dependents' Allowances to Surviving Spouses

The Committee bill would provide for substantial increases in the monthly dependents' allowances paid to surviving spouses. Under current law, that amount is $33 for each child; under the Committee bill, the surviving spouse would receive $87 for the first child and $55 for each additional child. These increases would bring the surviving spouses' dependents' allowances more realistically in line with the actual costs of supporting children; and the new allowances are identical to the increased dependents' allowances provided for service-connected disabled veterans who are totally disabled under title I of the bill.

This increase would benefit approximately 31,000 (of the 218,000 surviving spouses receiving DIC) who have dependents.

Housebound Rate for Surviving Spouses Receiving DIC

The Administration-proposed provision in S. 2828 as introduced entitling a surviving spouse receiving DIC to an additional monthly allowance, if such surviving spouse is "housebound", is carried forward in the Committee bill, and the amount of that allowance is

slightly increased—from $44 to $45—to reflect the 7.3-percent increase applicable to other rates.

The VA recommended such an allowance in its report entitled "Evaluation of Benefits under the Dependency and Indemnity Compensation (DIC) Program", submitted to Congress on January 31, 1978, and mandated by section 404 of Public Law 94–433, and included a request for funding of the new rate in its January budget request.

The VA recommended an intermediate rate for surviving spouses so disabled because such disabled persons incur substantially greater expenses for health care and other basic necessities.

Under current law, totally disabled veterans—but not surviving spouses similarly disabled—receiving compensation or pension are entitled to a "housebound" allowance. Such allowances are payable where the veteran is not so disabled as to be in need of regular aid and attendance, but is, by reason of disability or disabilities, substantially confined to his or her house, or the ward or clinical areas if the veteran is institutionalized.

Presently, disabled surviving spouses receiving DIC are entitled to a monthly aid-and-attendance allowance of $79. The new rate—one-half of the aid-and-attendance rate—would be payable to a surviving spouse who is so disabled as to be confined substantially to his or her house or immediate premises (or ward or clinical areas, if institutionalized) by reason of a disability or disabilities expected to remain throughout the surviving spouse's lifetime.

Approximately 2,800 surviving spouses would be eligible for the new housebound rate in fiscal year 1979.

Benefits for Surviving Spouses and Children of Totally Disabled Service-Connected Disabled Veterans

The Committee bill incorporates the provision of Amendment No. 3067 relating to survivors of totally disabled veterans.

As discussed above, chapter 13 of title 38 provides eligibility for DIC to surviving spouses, children, and needy parents of veterans whose deaths are determined by the VA to be service connected.

Under VA regulations issued pursuant to chapter 13 (38 CFR part 3), if a service-connected disability or disabilities is found to be the primary or contributory cause of death, the veteran's death is considered to be service connected. These determinations are generally, the Committee believes, made on a liberal basis. For example, a veteran may be suffering from non-service-connected disabilities which by their very nature are so overwhelming that eventual death can be anticipated irrespective of coexisting disabling conditions which are service connected. Even though such a non-service-connected disability is the primary cause of death, the VA gives consideration to whether the coexisting service-connected conditions were of such severity as to have a material influence in accelerating death. Where death has been so accelerated, it will be considered as service connected. The survivors of any veteran whose service-connected disabilities were either the primary cause of death or contributed materially in producing death would thus be elibible for service-connected death benefits, primarily DIC. The Committee endorses this longstanding interpretation of current law.

The Committee bill would provide for payment of benefits under the DIC chapter—to be known as "section 411A and 414A benefits"—to the survivors of veterans who were rated as totally disabled because of one or more service-connected disabilities at the time of death.

Background

This provision is the result of a careful review of two studies conducted by the Veterans' Administration of DIC claims submitted by survivors of totally and permanently disabled veterans, and the Committee's analysis of the needs of the survivors of totally disabled veterans.

In the 93d Congress, section 207 of Public Law 93–295 required the VA to conduct a study of DIC claim denials where the veteran at the time of death was receiving compensation from the Veterans' Administration based on a total and permanent service-connected disability. This study, submitted on January 31, 1975, revealed that 24.93 percent of the 2,976 cases reviewed had been denied because no relationship between the veteran's service-connected disability and the cause of death had been established.

The Committee was convinced that many of these denials were caused by the VA's failure to take into account adequately the total impact of a total and permanent disability, and included in S. 1597, the Veterans Disability Compensation and Survivors Benefits Act of 1975, reported June 19, 1975 (S. Rept. No. 94–214), a provision to grant DIC to all survivors of permanently and totally disabled veterans who had been so rated for a period of 1 year or more. The Senate passed S. 1597 with this provision, but it was not agreed to by the House. However, the Veterans Disability Compensation and Survivors Benefits Act of 1975, as enacted (Public Law 94–72) included a requirement that the VA conduct a second study of DIC claims.

The study required by Public Law 94–72 was submitted to the Congress on September 28, 1976. It indicated that of the 1,597 cases under review, 12.87 percent were denied on the ground that no relationship was shown to exist between the veterans' service-connected disabilities and the cause of death.

The Committee appreciates the careful and thorough efforts on the part of the VA to accord each DIC claimant the maximum leeway in establishing a claim. However, the fact remains that from 12 to 25 percent of DIC claims are denied because the veteran's death is not found to be service connected.

The appropriate Federal obligation to these survivors should, in the Committee's view, be the replacement of the support lost when the veteran dies. For example, assume that a veteran who is totally blind from service-connected causes dies at the age of 55 from a heart attack, having been so disabled from the age of 22—a period of 33 years. During that period, his wife and he depended upon his disability compensation for income support, but, because his death is not service connected, she would not receive DIC. In many, if not most of these situations, the surviving spouse is middle-aged or older. At such an age, it is very difficult for the surviving spouse (almost all of them are widows) to become self-sufficient, and the veteran's estate is likely to be inadequate for her support.

Thus, the Committee bill would thus provide, under a new section 411A, for benefits with respect to surviving spouses, and, under a new section 414A, for benefits with respect to surviving children (hereinafter referred to as "section 411A benefits" and "section 414A benefits", respectively), to the survivors of certain veterans who were rated 100-percent service-connected disabled at the time of death, but not by reason of "individual unemployability," [1] and whose deaths have not been determined by the VA to be service connected, under three approaches:

(1) Benefits at the full DIC rate to the surviving spouse or child of a veteran who immediately prior to death (A) had been continuously rated totally disabled for 20 or more years (the point at which the 100-percent rating becomes protected and cannot be reduced), or (B) had been rated totally disabled for 10 or more years continuously since the date of discharge (after a continuous 10-year period, service-connected status is acquired for the life of the veteran).

(2) To the surviving spouses of all other such veterans who are rated totally disabled at the time of death, benefits payable on the basis of either of the following alternatives, between which the surviving spouse could elect: (A) payment of the full DIC rate for a period of time equal to the number of months immediately preceding death, during which the veteran was continuously receiving compensation at the 100-percent-disabled rate, or (B) monthly payments for life based on the amount payable under (A) spread out over the actuarially expected life of the survivor, the monthly amount being calculated by multiplying the applicable DIC monthly rate by the number derived by dividing the number of months the veteran was rated totally disabled by the estimated number of months of remaining life expectancy of the surviving spouse at the time of the veteran's death (based on standard mortality tables). For example, if the veteran was so rated for 9 years and the remaining life expectancy of the surviving spouse is 18 years, the surviving spouse could elect to receive benefits (i) at the full DIC rate for 9 years or (ii) at the 50-percent (9÷18=50 percent) rate for as long as he or she lives.

(3) To the surviving children of the same category of veterans as described in (2), above, benefits to be determined by multiplying the applicable monthly DIC rate by the number derived by dividing the number of months the veteran was rated totally disabled by the number of months remaining before the child attains age 21. For example, if the veteran was rated at 100 percent for 6 years and the child is age 13 when the veteran dies, the child would receive benefits at 75 percent (6÷8=75 percent) of the DIC rate until the child reaches age 18, or age 23, if attending school. However, in the case of a helpless child, one who becomes permanently incapable of self-support before reaching age 18, the benefits would be paid at the full DIC rate as long as the child remains helpless.

[1] "Unemployability" refers to the payment of compensation at the 100-percent rate to veterans whose schedular evaluation, according to the Schedule of Rating Disabilities (38 CFR Part 4), is less than 100 percent, but who are unemployable. In most cases, such a rating is temporary.

This provision includes the limitation that in no case would monthly benefits be greater than those payable to survivors receiving DIC when the death of the veteran is determined to be service-connected. Also, this provision would not be applicable to the parents of veterans whose death is not determined to be service-connected.

Section 411A and 414A benefits would be payable in the same manner and to the same extent as DIC benefits. The basic surviving-spouse eligibility requirements relating to marriage—generally, marriage prior to certain dates, for one year or more, or for any period of time if a child is born during or before the marriage—would be the same. Presently, DIC benefits are terminated if the surviving spouse remarries, but, under section 103(d)(2) of title 38, such benefits are restored if the new marriage terminates in death or divorce; section 411A benefits would also be terminated and restored in such situations. In the case of certain survivors eligible for benefits under the military Survivor Benefit Plan (SBP), SBP benefits are, under section 1448(d) of title 10, United States Code, offset dollar for dollar by DIC benefits, and it is intended that this principle also be applied to section 411A and 414A benefits.

Under the new program, as in the DIC program, section 411A and 412A benefits would not be paid if the veteran's death resulted from his or her own willful misconduct.

These benefits would also not be paid in cases in which the veteran's death resulted from the surviving spouse's willful misconduct, in the case of section 411A benefits, or the surviving child's willful misconduct, in the case of section 414A benefits. These restrictions are necessary because the payment of section 411A or 414A benefits, unlike DIC benefits, is predicated on the lack of a finding by the VA that the veteran's death was service connected.

However, the fact that a veteran's death is not the result of natural causes would not bar the survivors from eligibility for section 411A or 414A benefits. The purpose of those benefits is to provide income security to the survivors. This reflects the Committee's view that the veteran's total disability, endured over a lengthy period of time, necessarily results in a substantial impairment of the veteran's ability to provide for his or her survivors; and that the primary purpose of the new benefit is to compensate for that impairment.

Thus, the actual cause of the veteran's death (with the exception of deaths attributable to willful misconduct) is irrelevant. For example, if a veteran, blinded during service, and his family derive their major support from the veteran's disability compensation, the impact of the veteran's death on the survivors is the same—loss of income—whether the veteran dies from a non-service-connected heart attack or as the result of a taxicab accident. (It should be noted that a death may be determined to be service connected even though it is "accidental"—for example, in the case of a death from a household fire in which the veteran's disability precluded his or her escape.)

On July 26, 1978, the House passed H.R. 11890, a measure having a similar purpose, which would entitle such survivors, where the service connection of the death was not established, to receive DIC if the veterans' total and permanent disability rating had been in effect for 10 years or more, or continuously from the date of discharge, but, in the case of a surviving spouse, only if the survivor had been married to the veteran for 5 years or more immediately preceding the veteran's death, and only if the veteran died from natural causes.

On June 8, Senator Biden introduced S. 3187, a counterpart of the House bill; and on June 23, 1978, Senator Tower introduced S. 3236, similar to the House bill but not requiring a 5-year period of marriage.

Another bill currently pending in the Committee, S. 13, introduced by Senator Inouye on January 10, 1977, would provide for the payment of DIC to all widows of 100-percent service-connected disabled veterans who died after December 31, 1956, of non-service-connected causes—with the benefits subject to a 50-percent offset against other income available to the widow.

Also pending before the Committee is S. 1929, introduced by Senator Thurmond on July 26, 1977, which would extend DIC eligibility to the survivors of blinded veterans, regardless of the cause of the veteran's death.

Such proposed legislation is based, as is this provision in the Committee bill, on the premise that the presence of a 100-percent service-connected disability may reduce normal life expectancy and, even more importantly, so overwhelm a family as to prevent the normal accumulation of an estate sufficient to provide for the survivors.

Despite the VA's strong objections to all of those proposals on the grounds that very liberal cause-of-death adjudications are already made and that it is not a Federal responsibility to provide DIC in cases of non-service-connected deaths, the Committee believes that it is appropriate to provide benefits based on DIC rates with the level (or duration) of such benefits designed to provide appropriate support to the survivors, primarily on the basis of the duration of the 100-percent rating. Where the veteran's rating was in effect for a long period of time, the impact on the family is necessarily greater; and the effect on normal life expectancy may also be greater.

Burial Benefits Improvements

Funeral and burial expenses for service-connected deaths

The Committee bill would provide for an increase of $700—from $800 to $1,500—in the allowance which the VA pays, at the request of the survivors, for funeral and burial expenses for a veteran whose death was service connected.

Until 1974, there was no difference between the funeral and burial benefits paid to the survivors of veterans who died from service connected causes and those who died from non-service-connected causes. The amounts so provided for funeral and burial expenses were substantially less than the average funeral and burial costs in this country. In clear recognition of the greater Federal responsibility for service connected deaths, the Congress corrected that situation, in part, by enacting legislation that increased substantially, from $250 to $800, the maximum allowance payable for such deaths. That legislation, section 5(a)(2) of the National Cemeteries Act of 1973 (Public Law 93–43), codified at section 907 of title 38, tied the amount of allowances payable at the request of the survivors to the amount payable under section 9134(a) of title 5, United States Code for Federal employees who die from injuries sustained in the performance of their duties.

The $800 maximum payable under that provision was set in 1958 and has not been increased despite the very substantial rise in funeral and burial expenses over the past 20 years. Estimates from the National

Association of Funeral Directors indicate that the average cost of a funeral (including the basic funeral and the casket) in 1958 was $661; by 1976, the cost of an average funeral has risen to $1,348. The Bureau of Consumer Protection, Federal Trade Commission, in its June 1978 report, entitled "Funeral Industry Practices", indicated that funeral costs rise by about 8.5 percent per year, so that the estimated average cost of a funeral as of 1978 is over $1,500. Moreover, these figures do not include the cost of an interment receptacle, vault, or liner (the cost of these items range from $300 to $2,000), the cost of opening and closing the grave (the cost for this service ranges from $50 to $400), or the cost of the burial plot (the cost for a plot averages from $75 to $500). By adding these additional costs to the cost for the basic funeral, the Bureau arrived at a cost figure (described as conservative) of nearly $2,400 for the average total funeral today.

The Committee believes that the highest priority of the VA programs relating to burial and cemetery benefits should be assistance to the survivors of those veterans who die from service-connected causes. Thus, because the costs related to burials have risen substantially since 1958, the Committee bill would increase the maximum allowance in such cases to $1,500 or the amont provided under the Federal-employee job-related-death provision (5 U.S.C. 8134(a)), whichever is the greater.

In fiscal year 1977, 11,240 awards were made to survivors under this provision; for fiscal year 1978, 12,500 awards are projected by the VA, and for fiscal year 1979, 13,500 awards are projected by the VA.

Memorial markers for unrecovered remains

The Committee bill also contains a provision derived from H.R. 12257, passed by the House of Representatives on June 19, 1977, to expand entitlement for a memorial marker where the remains of the deceased have not been recovered or identified, or were buried at sea, to include any situations where the remains of veterans are so missing or unidentified. Under current law, the VA can provide such a memorial marker (costs range approximately from $27 to $55 in fiscal year 1977—and approximately from $24 to $63 in fiscal year 1978) only for the remains of a service person who dies while on active duty, and not when the death occurs after leaving the service, although the survivors of all veterans whose remains are recovered are eligible for a VA-provided headstone or marker. The bill eliminates this anomaly so that such a marker can be provided to honor the memory of any veteran whose remains are not recovered or identified.

TITLE III: MISCELLANEOUS PROVISIONS

Extension of Compensation Benefits to U.S. Citizens Who Fought With Allies in World War II

The bill provides entitlement to compensation to Americans who, while citizens of the United States, volunteered during the period of September 1, 1939, to December 8, 1941, to serve in the armed forces of our allies during World War II and suffered service-connected disabilities during such service, and who are now citizens and residents of the United States.

Background

During the period before the United States entered World War II, many Americans volunteered to serve in the Armed Forces of the United Kingdom and other countries with whom the United States was to become allied. Some American citizens who volunteered to fight in the forces of those countries when World War II began in Europe lost their American citizenship. Congress acted in 1942 to allow such persons to regain their citizenship by taking an oath before an American diplomatic official (Public Law 77–513). For purposes of that procedure, World War II was deemed to have begun on September 1, 1939, the date of the German invasion of Poland. (Two days later, on September 3, 1939, Britain and France declared war on Germany.)

Those persons (United States citizens when they volunteered to serve and United States residents when applying for and receiving benefits) were made eligible for GI bill veterans' benefits, such as educational assistance and home loan guarantees, by 1945 amendments to the Servicemen's Readjustment Act of 1944, which are now codified in section 109(b) of title 38. If the country in whose forces they served has entered into a reciprocal reimbursement agreement with the United States, they are also eligible for VA health care under section 109(a) of title 38. The only country which has such an agreement with the United States is the United Kingdom. (Section 109(a) also applies to all veterans of service with allies in World Wars I and II.) However, eligibility for VA disability compensation was never extended to such persons.

In the Committee's view, the extension of compensation benefits to American citizens who fought with our allies in World War II is important in order to recognize that those Americans who so served in the fight against Nazi totalitarianism and aggression and suffered disabilities in such service are deserving of appropriate remuneration to compensate for their service-incurred disabilities. The compensation benefits payable by the allied governments are far below comparable VA benefits. For example, an American who volunteered to serve in the British forces and who suffered a permanent disability rated at 100 percent, would receive from the British Government, depending on his service rank, from $2,707 per year (private) to $3,268 per year (major general). The comparable VA rate would be $9,048.

Committee bill provision

Under the Committee bill, compensation would be provided to these persons in the same manner and to the same extent as to veterans who served in the United States forces, reduced by the amount of benefits received from the allied government. Service connection would be presumed if the person were receiving benefits from the allied government, but the VA would evaluate the disability according to its own rating schedule.

There is little information on which to base an estimate of the number of persons who would be benefited by this provision. Several thousands of United States citizens—perhaps as many as 12,000—volunteered to serve in the British, French, or other allied forces prior to the attack on Pearl Harbor. According to information received from the British government, 2,000 persons residing in the United

States are currently receiving "war pension"—similar to VA compensation—but, of course, not all may be American citizens who volunteered during World War II.

Medal of Honor Pension Increase

The Committee incorporates from Amendment No. 3067 the provision for an increase—from $100 to $200—in the monthly special pension paid to recipients of the Medal of Honor. The Medal of Honor is the highest award for bravery an individual in the United States may receive. Given by the President in the name of Congress, it recognizes that the individual to whom it is awarded has performed a deed so valorous at the risk of his own life, that, had he not done it, he would not have been subject to justifiable criticism. It was established 556 years ago and is the first military decoration formally authorized by our Government as a badge of valor. The history of this medal, the deeds for which it has been awarded, and those who have earned it are of the greatest concern to the Nation they have served. Amidst the ugliness and tragedy of war, many individuals who have been called to battle display outstanding courage and valor and willingness to make sacrifices. The most supreme acts of heroism are recognized by the award of the Medal of Honor.

To enhance the significance of this highest award, and to set it apart from all others, Congress provided in 1918 for a monetary stipend, now known as special pension, payable to recipients of the Medal. In 1961, an increase to $100 per month was authorized. Since that time, the Consumer Price Index has more than doubled, and thus the enhancement which the special pension represents has been seriously diminished. The Committee bill thus proposes to restore this enhancement by increasing the rate to $200 per month, which would benefit approximately 286 living recipients. The House passed a similar measure, H.R. 11889, on July 26, 1978.

Automobile Assistance Allowance

The bill incorporates from Amendment No. 3067 the provision of an increase—from $3,300 to $4,100—in the automobile assistance allowance provided for under chapter 39 of title 38. Under current law, veterans who have suffered the service-connected loss or loss of use of one or both feet, or one or both hands, or who are blind, are entitled to a one-time grant of $3,300 to assist them in purchasing an automobile. In addition, the VA provides special assistance to the veteran in adapting the automobile to the veteran's needs, as well as training in the use of the specially adapted automobile.

Background

The program of automobile assistance allowances—now chapter 39 of title 38—was established by the Congress in Public Law 79–663, enacted in 1946. Under that law, certain disabled veterans of World War II (with service between December 7, 1941, and December 31, 1946) were provided with or assisted in the purchase of an automobile or other conveyance. Public Law 82–187, enacted in 1951, extended these benefits to veterans of the Korean conflict—with service between June 27, 1950, and January 31, 1955. Such allowances are also pro-

vided to veterans of post-World War II peacetime periods, and, under Public Law 95–116, enacted in 1977, to veterans of World War I and pre-World War II peacetime periods.

Public Law 90–666, enacted in 1970, effective on January 11, 1971, increased the maximum amount payable toward the purchase of an automobile or other conveyance from $1,600 to $2,800. The law also provided, for the first time, for VA payment, in addition to the dollar grant, of the cost of necessary adaptive equipment, as well as of the maintenance, replacement, and installation thereof.

In 1975, the amount of the allowances was increased to $3,300 by Public Law 95–538. Since that time, the Consumer Price Index (CPI) component for new automobiles has risen approximately 22.7 percent and will very likely continue to rise.

Thus, an increase to $4,100 assures that the value of this benefit keeps pace with inflation.

VA Study of Disability Compensation and Health-Care Benefits for Former Prisoners of War

Recently, the Committee has become concerned about claims, particularly by former prisoners of war (POW's) from World War II who were interned in the Pacific theater, of long-lasting and progressive physical and psychological damage attributable to the conditions of the internment experienced by former POW's.

It appears that, because of the inadequate state of medical knowledge of various hardships suffered during internment, including the long-term effect of dietary deficiencies and unsanitary conditions, and because of the strong desire of former prisoners of war to return home as quickly as possible after World War II, those repatriation camps may have discharged veterans without thorough examinations and without close attention to their potential health problems. A major problem appears to be a lack of adequate records, necessary at a later date in order to establish service connection for ailments possibly related to internment. Also, conditions which may have seemed relatively minor at the time of repatriation may have become progressively debilitating. Thus, thirty years later, a former POW suffering from a debilitating disease that may well have resulted from his or her internment, may encounter extreme difficulty in proving service connection.

Former prisoners of war, however, may have a higher incidence of particular types of diseases. A National Academy of Sciences study in 1974 entitled "Follow-up Studies of World War II and Korean War Prisoners", indicated—

> Higher rates of cardiovascular disease for prisoners of war interned in the Pacific theater during World War II than for non-POW's who served in that theater;
>
> Strong statistical evidence of "K–Z syndrome", also known as "POW syndrome", which is marked by severe, permanent psychological scars and nonspecific physical problems and is attributed to organic brain disease, among POW's interned in the Pacific theater during World War II and during the Korean conflict;

Much higher incidence of tuberculosis and other infective and parasitic diseases among POW's interned in the Pacific theater during World War II and during the Korean conflict than among either non-POW's who served in those theaters or POW's interned in the European theater during World War II; and

Greatly increased death rates from nutritional disorders, nerve disorders, intestine and liver diseases, genitourinary diseases, and bone diseases among POW's interned in the Pacific theater during World War II.

The Committee believes that the research required for such a complex issue, which includes substantial historical analysis, can best be undertaken at this time by the agencies involved, the VA and the Department of Defense.

Thus, the Committee bill directs the VA to conduct and submit to Congress, by March 1, 1979, a study of the disability compensation and health-care benefits accorded former prisoners of war. The study would direct the VA, in consultation with the Department of Defense, to review the procedures used in repatriating POW's and to evaluate the adequacy of those procedures, including the resultant effect on the medical records of POW's. The report would also contain a study of the types and severity of disabilities particularly prevalent among POW's in specific theaters of operation. The VA would also review and analyze current law, regulations, and procedures with regard to claims of former POW's for service-connected benefits such as the VA's reasons for its current interpretation—that dental disabilities of former POW's must be established as service-connected before the VA authorizes outpatient dental treatment—of section 612(b)(3) of title 38; and undertake a comparison of the treatment accorded former POW's under the veterans' benefits programs of other governments. Finally, the VA would be required to include in the report appropriate administrative and legislative recommendations necessary to assure that former POW's are awarded compensation and health-care benefits for disabilities reasonably attributable to their internment.

American Battle Monuments Commission

The Committee bill incorporates the provisions of S. 3347, a bi introduced by Senators Cranston and Thurmond on July 6, 1978, t require the continuation of the current practice of the American Batt Monuments Commission (ABMC) of hiring U.S. citizens as supe intendents and assistant superintendents of ABMC cemeteries.

The American Battle Monuments Commission is charged wi responsibility for, among other things, maintaining 18 cemeteries Europe, the final resting place for American soldiers who died Europe during World War I and World War II, and five cemeteries f American war dead in other overseas locations. The United Stat pursuant to a reservation sponsored by members of this Committee the Panama Canal Neutrality Treaty for which instruments of ra fication were exchanged on June 13, 1978—effective March 31, 1979 is currently negotiating with the Republic of Panama for a sixth su cemetery to be located in Corozal, Panama. The present overs permanent employment authorization for the Commission for fis year 1979 is 4 military members, 40 U.S. civilians, and 335 lo nationals.

The State Department has proposed that some of the 40 positions presently filled by American citizens, specifically seven superintendent positions in World War I cemeteries in Europe, be filled by foreign nationals. This change was suggested by the State Department to reduce costs by reducing the number of U.S. Government personnel in foreign countries.

The Committee believes that, whatever the merit of a policy of reducing the number of American citizens in U.S. Government positions overseas generally, this proposal to replace American citizens as superintendents and assistant superintendents of cemeteries located in foreign countries for the purpose of honoring our overseas war dead is inappropriate. As a consequence, the Committee bill would amend the act which established the ABMC (36 U.S.C. 121) to require that all persons employed as cemetery superintendents and assistant superintendents be American citizens, as is the present practice.

Tribute to Veterans Who Served in the Vietnam Conflict

The Committee bill includes a provision which directs the Secretary of Defense to place a plaque in the Memorial Amphitheater in Arlington National Cemetery to honor veterans who served in the Vietnam conflict. This provision is derived, without change, from H.R. 12261, passed by the House of Representatives on July 17, 1978, and is supported by the Administration. The plaque would bear the following inscription:

> The people of the United States of America pay tribute to those members of its Armed Forces who served honorably in Southeast Asia during the Vietnam conflict.

In order to honor further those members of the Armed Forces who lost their lives in hostile action in Southeast Asia during the Vietnam conflict, the Secretary is to place near the plaque an appropriate display of the Purple Heart Medal and other decorations associated with such service in Vietnam.

In the National Cemeteries Act of 1973, the Secretary of Defense was directed to bring the remains of an unidentified member of the Armed Forces who died in Southeast Asia to Arlington National Cemetery for burial in the Tomb of the Unknown Soldier. However, because of the high effectiveness of identification procedures available to identify those who died in Vietnam, the Secretary has been thus far unable to locate an Unknown Soldier from among those who died in Vietnam. This provision, therefore, is intended to honor those who served in the Vietnam conflict and to create a present memorial to those who, so serving, made the ultimate sacrifice.

No Authorization of New Budget Authority

The Committee bill contains, as a precautionary measure, a provision clarifying that (except for new spending authority—that is, entitlements such as the compensation, DIC, burial benefit, and automobile assistance rate increases and other improvements in the Committee bill) nothing in the bill should be construed as authorizing the enactment of additional new budget authority. This provision is advisable in order to preclude any interpretation of the provisions as authorizing appropriations for the costs of implementation and thereby

requiring, prior to floor consideration, a waiver by the Senate unde
section 402(a) of the Congressional Budget Act of 1974, since the bi
will be reported after May 15, 1978, and, possibly, referral to th
Appropriations Committee under section 401(b)(2) of that act.

In accordance with section 252(a) of the Legislative Reorganizatio
Act of 1970 (Public Law 91-510, 91st Congress), the Committe
based on information supplied by the Congressional Budget Offic
estimates that the 5-year cost resulting from the enactment of th
Committee bill would be $682.8 million in fiscal year 1979; $672.
million in fiscal year 1980; $663.5 million in fiscal year 1981; $655.
million in fiscal year 1982; and $647.4 million in fiscal year 198

A detailed breakdown of costs and cost-savings, as estimated b
CBO, over the 5-year period follows:

CONGRESSIONAL BUDGET OFFICE—COST ESTIMATE

1. Bill number: S. 2928.
2. Bill Title: The Veterans Disability Compensation and Survivo
Benefit Act of 1978.
3. Bill status: As ordered reported by the Senate Committee o
Veterans Affairs, July 27, 1978.
4. Bill purpose:

Title I

Section 101(a) would provide a 7.3 percent increase in the rat
payable for disability compensation.

Section 101(b) would provide that veterans receiving compensati
for the loss or loss of use of three extremities be paid at the next high
rate or intermediate rate above his/her present level of compensatio

Section 101(c) would provide for a special aid and attendan
allowance of $900 per month for a veteran whose disabilities are
severe that, in absence of care by another person, such veteran wou
require hospital, nursing home or other residential institutional ca

Section 102 would increase allowances for dependent spouses a
children under disability compensation to $87 a month for the fi
dependent and $55 monthly for each additional dependent. (Ra
seated apply to dependents of a veteran rated 100-percent disable

Section 103 would provide that a veteran who has suffered t
service-connected loss or loss of use of one paired extremity entitli
the veteran to a rating of 40 percent or more, and who has also suffe
the non-service-connected loss or loss of use of the other pai
extremity, which if service-connected would also be rated 40 perc
or more, would be entitled to a percentage increase in his/her rat
equal to the same amount that the rating would be increased by vir
of bilateral impairment if both disabilities were service-connected

Section 104 would increase by 7.3 percent the clothing allowa
payable to veterans whose service-connected disabilities necessit
the use of prosthetic or orthopedic devices or wheelchairs.

Title II

Section 201 (a) and (c) would increase by 7.3 percent the ra
payable to surviving spouses and children in receipt of dependen
and indemnity compensation (DIC).

Section 201(b) would increase the allowance for dependent child
of DIC surviving spouses to $87 for the first child and $55 for e
additional child.

Section 201(d) would provide for housebound allowances for DIC surviving spouses who, because of disability, are confined to their homes.

Section 202 would increase by 7.3 percent the rates payable to DIC surviving children where there is no surviving spouse entitled.

Section 203 would increase by 7.3 percent the rates payable td DIC surviving children who have attained the age of 18 but who are still entitled to benefits by virtue of being permanently incapable of self-support or in school.

Section 204 would clarify certain definitions and accounting provisions.

Section 205 would extend eligibility for full DIC benefits to surviving spouses of veterans who did not die of service-connected causes but who at the time of death were rated permanently and totally disabled and had been so rated for 20 years or more prior to the veteran's death, or for 10 years or more if such rating was continuous from the date of the veteran's discharge. Limited eligibility for DIC benefits would be extended to surviving spouses of veterans who were rated permanently and totally disabled at the time of death, but where such rating had been effective for less than 20 years. Such surviving spouses could elect to receive benefits in either of two ways: 1.) full benefits could be paid for the same number of months as the number of months that the veteran was rated permanently and totally disabled or 2.) reduced benefits could be paid throughout the lifetime of the surviving spouse (assuming she/he remains otherwise eligible). The amount of the reduced benefit would be computed as follows: the amount of the full DIC benefits for which the surviving spouse would otherwise be entitled would be multiplied by the number derived by dividing the number of months that the veteran was rated permanently and totally disabled by the number of months of life expectancy of the surviving spouse at the time of the veteran's death.

Section 206 would extend eligibility for memorial markers to veterans who die and whose bodies are not recovered.

Section 207 would extend eligibility for DIC benefits to surviving children of permaneatly and totally disabled veterans who did not die of service-connected causes, under the same provisions as applicable to surviving spouses in Section 205.

Section 208 would increase from $800 to $1,500 the maximum burial benefit available for veterans dying of service-connected causes.

Title III

Section 301 would extend eligibility for disability compensation to American citizens who volunteered, during the period of September 1, 1939 to December 8, 1941, to serve in the armed forces of U.S. allies during World War II and suffered service-connected disabilities during such service. The amount of such compensation benefits would be reduced by the amount of any similar benefits received from the allied government.

Section 302 would increase from $100 to $200 the amount of the special monthly pension payable to all Medal of Honor recipients.

Section 303 would increase from $3,300 to $4,100 the maximum automobile assistance allowance available to certain disabled veterans.

Section 304 would direct the VA to conduct a study of the disability compensation and health care benefits accorded former prisoners of war.

Section 305 would require that superintendents and assistant superintendents of American Battle Monuments Commission cemeteries be American citizens.

Section 306 would provide for placement of a plaque honoring Vietnam-era servicemen in Trophy Hall of the Memorial Amphitheater at Arlington National Cemetery.

Section 307 specifies that, with the exception of new spending authority, nothing in this bill should be construed as providing new budget authority.

Title IV

Section 401 specifies that all amendments made to title 38, U.S.C. by this bill would be effective on October 1, 1978. All other provisions would be effective on the date of enactment.

5. COST ESTIMATE

[By fiscal years, in millions of dollars]

	Req.	1979	1980	1981	1982	1983
Title I:						
Sec. 101(a)	BA	312.9	314.4	316.0	317.5	319.2
	O	287.9	314.3	315.9	317.5	319.0
Sec. 101(b)	BA	2.5	2.5	2.5	2.5	2.5
	O	2.5	2.5	2.5	2.5	2.5
Sec. 101(c)	BA	12.1	12.2	12.3	12.3	12.4
	O	11.2	12.1	12.2	12.3	12.3
Sec. 102	BA	206.2	198.0	190.1	182.5	175.2
	O	189.7	198.7	190.7	183.1	175.8
Sec. 103	BA	(1)	(1)	(1)	(1)	(1)
	O	(1)	(1)	(1)	(1)	(1)
Sec. 104	BA	.9	1.0	1.0	1.1	1.1
	O	.9	1.0	1.0	1.1	1.1
Title II:						
Sec. 201 (a) and (c)	BA	67.7	68.1	68.4	68.8	69.1
	O	62.3	68.1	68.4	68.7	69.1
Sec. 202	BA	46.1	41.5	37.5	34.2	31.0
	O	42.4	41.9	37.8	34.5	31.2
Sec. 203	BA	1.5	1.5	1.5	1.5	1.5
	O	1.5	1.5	1.5	1.5	1.5
Sec. 201(b)	BA	0	0	0	0	0
	O	0	0	0	0	0
Sec. 201(d)	BA	22.3	23.0	23.7	24.4	25.1
	O	20.5	23.0	23.6	24.3	25.0
Sec. 204	BA	(1)	(1)	(1)	(1)	(1)
	O	(1)	(1)	(1)	(1)	(1)
Sec. 205	BA	7.7	7.7	7.7	7.7	7.7
	O	7.7	7.7	7.7	7.7	7.7
Sec. 207	BA	(1)	(1)	(1)	(1)	(1)
	O	(1)	(1)	(1)	(1)	(1)
Sec. 206	BA	1.5	1.6	1.6	1.7	1.7
	O	1.4	1.6	1.6	1.7	1.7
Sec. 208	BA	(1)	(1)	(1)	(1)	(1)
	O	(1)	(1)	(1)	(1)	(1)
Sec. 210	BA	1.4	1.3	1.2	1.0	.9
	O	1.4	1.3	1.2	1.0	.9
Title III:						
Sec. 301	BA	(2)	(2)	(2)	(2)	(2)
	O	(2)	(2)	(2)	(2)	(2)
Sec. 302	BA	0	0	0	0	0
	O	0	0	0	0	0
Sec. 303	BA	0	0	0	0	0
	O	0	0	0	0	0
Title IV:						
Sec. 401	BA	0	0	0	0	0
	O	0	0	0	0	0
Total S. 2828	BA	682.8	672.8	663.5	655.2	647.4
	O	629.4	673.7	664.1	655.9	647.8

[1] Less than $500,000.
[2] Not available.

6. Basis for estimate:

TITLE I

Section 101(a): The cost of the 7.3 percent increase in disability compensation rates was calculated by multiplying the number of veterans at each disability rating level by the increase in payment for that level.

Section 101(b): According to VA figures, there are 727 veterans receiving compensation for the loss or loss of use of three extremities. It is estimated that these veterans would receive an average increase in benefits of $290 a month.

Section 101(c): Since the determination of eligibility for the special aid and attendance allowance would have to be made on a case-by-case basis, the number of veterans who would qualify cannot be estimated precisely. This estimate assumes 3,000 eligibles a year.

Sections 102 and 201(b): The cost of the new dependents allowances for disability compensation and dependency and indemnity compensation was estimated by multiplying the number of dependents in each payment category by the amount of increase for that category.

Section 103: There are no data available upon which to base an estimate of the number of veterans who have lost, or lost the use of, one paired extremity due to service-connected causes and have also lost, or lost the use of, the other paired extremity as a result of non-service-connected causes. Since, however, the probability of losing an extremity in civilian life is quite low, it is reasonable to assume that the number of cases affected by this provision would be insignificant.

Section 104: There are approximately 63,000 veterans receiving clothing allowances. All such veterans would be eligible for the increased benefit.

TITLE II

Sections 201(a), 201(c), 202 and 203: The number of DIC recipients in each payment category were multiplied by the increase in payment for the category to estimate the cost of the increase in DIC rates.

Section 201(d): It is not possible to estimate precisely the number of DIC surviving spouses who would be eligible for housebound allowances, as no surviving spouse groups are now eligible for such benefits. A comparison with the number of compensation veterans who receive housebound allowances would not be valid, since all such veterans have service-connected disabilities. Of veterans receiving pension, 3.7 percent also receive housebound allowances. Unlike pension veterans, however, DIC widows need not be disabled, elderly, or needy. It can, therefore, be assumed that a much lower percentage of DIC widows would be eligible for this benefit. A rate of 0.8 percent was used for this estimate.

Sections 205 and 207: The estimate of the cost of these two sections is somewhat rough since much of the data needed to estimate the cost precisely is not available. According to the VA study, "Total Service-Connected Disability and Cause of Death" (September 1976), 22 percent of denied DIC claims were survivors of veterans who had been rated permanently and totally disabled for 20 years or more. Although the study does not include data on claims of veterans who were rated 100 percent for 10 years or more and continuously since the date of discharge, it is assumed that this category would cover

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an additional 8 percent of denied DIC claims. Under these assumptions, there would be approximately 6,400 new cases eligible for full DIC rates as a result of this provision.

Based on the median age of such veterans at the time of death (60 years of age; it is assumed that the spouse would be approximately 3 years younger), the average life expectancy of white U.S. females (78 years), and the median number of years that such veterans were rated 100 percent (8.8 years), it is estimated that 200 new cases would elect full benefits for a limited time period and 1,600 cases would elect reduced benefits (estimated at 40 percent of full rates) for the remainder of their lives.

Section 206: Since the number of veterans whose remains are not recovered after their deaths would be quite low and the cost of memorial markers is small, the cost of this provision should not be significant.

Section 208: According to VA figures, there are approximately 11,000 claims for service-connected burial benefits each year.

Section 210: The cost of this provision would be insignificant.

TITLE III

Section 301: According to figures supplied by the Senate Committee on Veterans Affairs, compensation benefits under this provision would be extended to approximately 1,000 cases at an average cost of $1,500 a year.

Section 303: There are currently approximately 1,700 claims for automobile assistance allowances each year that would be eligible for the higher benefit.

Section 304: Given the time frame necessitated by the deadline for filing the report on this bill, it was not possible to obtain from VA an estimate of the cost of this study. Since, however, Section 306 specifies that no new budget authority (other than spending authority) is authorized by this bill, the study must be made within the confines of the current VA budget request.

Section 305: Since this provision would not affect total employment or pay levels, it would have no cost.

Required budget authority.—Although this bill would result in additional future federal liabilities through extensions of certain entitlements, the bill would require subsequent appropriation action to provide the necessary budget authority. The figures shown in the cost estimate above as "Required Budget Authority" represent that amount of budget authority needed to cover the estimated outlays that would result from the enactment of S. 2828.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by K.W. Shepherd.

10. Estimate approved by G. Nuckols, for James L. Blum, Assistant Director for Budget Analysis.

Regulatory Impact Statement

In compliance with paragraph 5 of rule XXIX of the Standing Rules of the Senate, the Committee on Veterans' Affairs has made an evaluation of the regulatory impact which would be incurred in carrying out the provisions of the Committee bill. The results of that

evaluation are described below according to the first three titles of the bill: I—Veterans' disability compensation increases and other improvements; II—Dependency and indemnity compensation increases and other improvements for survivors; III—Miscellaneous provisions. Title IV (Effective dates) is expected to have no regulatory impact.

A. Estimate of the numbers of individuals and businesses who would be regulated, and a determination of the groups and classes of such individuals and businesses:

Title I.—Title I, which provides for rate increases and improvements in the service-connected disability compensation program, would not result in the regulation of any individuals or businesses.

Title II.—Title II, which provides for rate increases and improvements in the dependency and indemnity compensation program, a new program of benefits for the survivors of certain totally disabled veterans, and improvements in the burial benefits program, would not result in the regulation of any individuals or businesses.

Title III.—Title III, which contains miscellaneous improvements in certain service-connected programs, entitlement to disability compensation for certain allied veterans, an increase in the Medal of Honor pension, a memorial for veterans who served in Vietnam, and a continuation of the present practice of employing United States citizens to serve as superintendents in United States cemeteries abroad, would not result in the regulation of any individuals or businesses.

B. Determination of the economic impact of such regulations on individuals, consumers, and businesses affected:

As indicated above, there would be no such regulations.

C. Determination of the impact on the personal privacy of the individuals affected:

Titles I, II, and III.—Certain financial and other personal disclosures would be required of all persons applying for or receiving benefits under section 301 of the Committee bill, which would entitle certain allied veterans to disability compensation. Such disclosures would include information about income received from an allied government and other information necessary to establish eligibility, and would generally have a significant impact on the personal privacy of the affected individuals only with respect to financial matters.

D. Determination of the amount of additional paperwork that will result from regulations to be promulgated under the bill:

Titles I, II, and III.—Regulatory changes anticipated under the Committee bill will generate little if any additional paperwork.

Section-by-Section Analysis of S. 2828 as Reported

Section 1

Provides that this Act may be cited as the "Veterans Disability Compensation and Survivors Benefits Improvements Act of 1978".

TITLE I—VETERANS DISABILITY COMPENSATION INCREASES AND OTHER IMPROVEMENTS

Section 101

Subsection (a) of section 101 would amend subsections (a) through (s) of section 314, title 38, United States Code, relating to the rates

of disability compensation, to increase the basic monthly rates of compensation paid to veterans with disabilities rated from 10 to 100 percent and other rates provided for in that section. Currently, a veteran with a 10-percent disability receives $41 monthly; and a veteran with a disability rated as total—100 percent—receives $754 monthly. Those rates would be increased to $44 and $809, respectively, by the Committee bill, and the rates for disabilities rated 20 to 90 percent would be increased proportionately. This section would also increase by 7.3 percent the higher rates of compensation authorized under subsections (e) through (o) of such section, for certain combinations of severe disabilities, the aid-and-attendance allowance rate authorized under subsection (r), the housebound rate authorized under subsection (s), and the limitation on the total amount payable monthly to a veteran entitled to compensation under subsection (k). Also, the maximum amount payable monthly to a veteran under subsection (p), which authorizes the Administrator to pay the next higher rate or intermediate rate to a veteran whose disabilities exceed the requirements prescribed in such section 314, or who is both blind and deaf, would be increased by 7.3 percent, from $1,312 to $1,408.

Subsection (b) of section 101 would further amend subsection (p) of section 314 to authorize an increase in the rate of compensation payable to a veteran who has suffered the anatomical loss or loss of use, or a combination of loss and loss of use, of three extremities. Thus, a veteran who has suffered such a severe combination of disabilities would be entitled to compensation at the next rate or intermediate rate higher than such veteran's present rate, but in no event exceeding $1,408, the maximum rate authorized under such subsection, as amended by subsection (a) of this section.

Subsection (c) of section 101 would further amend subsection (r) of section 314, relating to rates of disability compensation to provide for a special aid and attendance allowance of $900, payable monthly to a veteran entitled to compensation under subsection (o) of section 314 or to the maximum rate authorized under subsection (p), if the Administrator makes on express finding that the veteran is in need of the special aid and attendance of another person and that in the absence thereof, the veteran would require hospitalization, nursing home care, or other residential institutional care. Under existing law, a veteran compensated under subsection (o) or at the maximum rate under subsection (p) who is in need of regular aid and attendance receives $563 per month for such purpose (increased to $604 under subsection (a) of this section) Although all such veterans are very seriously disabled, the aid and attendance allowances payable to them are not conditioned on a finding that in the absence of care by another person they would require institutional care.

Subsection (d) of section 101 would authorize the Administrator to increase by 7.3 percent the rates of disability compensation payable to persons within the purview of section 10 of Public Law 85–857 who do not receive compensation under chapter 11 of title 38. Public Law 85–857 generally codified in title 38 of the United States Code the laws relating to veterans' benefits; and section 10 of that law provided that any individual who was receiving benefits as a veteran on December 31, 1958, under public laws administered by the VA but not so codified, was to continue to receive benefits at the rates payable under such public laws or under corresponding provisions of title 38, whichever is the greater, as long as he or she remains eligible.

Section 102

Clause (1) of section 102 would amend section 315 of title 38, relating to additional compensation—"dependents' allowances"—payable monthly to a totally disabled veteran who has dependents, to increase substantially those allowances. Under current law, a veteran so disabled who has a spouse, but no child, receives allowances of $46 per month; if the married veteran has one child, the amount is $77; if two children, $98; if three children, $120; and if more than three children, $120 plus $22 for each child in excess of three. Also under current law, a totally disabled veteran who has no spouse receives a monthly allowance of $30 for one child, $52 for two children, $77 for three children, and $22 for each child in excess of three. Under the Committee bill, a totally disabled veteran would receive an allowance of $87 per month for the first dependent (whether a spouse or child) and $55 per month for each additional dependent (child).

Under paragraph (2) of section 315, the additional compensation payable to veterans rated from 50- to 90-percent disabled is prorated so that, for example, a veteran rated at 50 percent would receive 50 percent of the amounts specified in paragraph (1) of such section. The method of prorating the amounts of additional compensation payable to veterans rated from 50- to 90-percent disabled would not be altered by the Committee bill.

Clauses (2) and (3) of section 102 amend paragraph (1) of section 315 by deleting existing clauses (C) through (G) of such paragraph and by redesignating existing clauses (H), (I), and (J) of such paragraph as clauses (C), (D), and (E), respectively.

Clauses (4), (5), and (6) of section 102 would amend clauses (C), (D), and (E) of paragraph (1) of section 315 (as redesignated by clause (3) of this section) in order to increase by 7.3 percent the amount of the dependents' allowance payable monthly to a totally disabled veteran who has a dependent parent or parents, from $37 (for each such parent) to $40; to such a veteran who has a severely disabled spouse, from $83 to $89; or to such a veteran who has a child of age 18 or over who is pursuing a course of education at an approved educational institution, from $70 to $75.

Section 103

Subsection (a) of section 103 would amend section 360 of title 38, relating to special consideration for certain cases of blindness, bilateral kidney involvement, or bilateral deafness, to add a new subsection (b), as follows:

New subsection (b) of section 360. Provides for special consideration in the case of a veteran who has suffered the service-connected loss of loss of use of an extremity, so as to entitle the veteran to a rating of not less than 40 percent, and has also suffered the non-service-connected loss or loss of use of the paired extremity, not as a result of the veteran's own willful misconduct, if the non-service-connected disability is such that it would, if service-connected, entitle the veteran to a rating of not less than 40 percent. In such a case, the veteran's service-connected disability is to be increased by the percentage that would be added to the combined value of both disabilities if both were service-connected and were independently rated in the same manner in which the Administrator would add such percentage to the combined value of less than total bilateral service-connected paired disabilities.

Thus, the disability rating of any veteran made eligible for such special consideration would be increased by approximately 10 percentage points, entitling the veteran to the appropriate monthly rate of compensation for the increased rating under sections 314 and 315 of title 38, as amended by sections 101 and 102, respectively, of the Committee bill. There is no comparable provision in current law, but existing section 360 provides that generally a veteran with—

(1) Service-connected blindness of one eye and non-service-connected blindness of the other eye,

(2) Service-connected loss or loss of use of one kidney and non-service-connected severe involvement of the other kidney resulting in total disability, or

(3) Service-connected total deafness in one ear and non-service-connected total deafness in the other ear, shall be compensated as if the entire disability were service connected.

Subsections (b) and (c) of section 103 would amend the catchline of section 360 to reflect the insertion of new subsection (b) of section 360 and the table of sections at the beginning of chapter 11 of title 38 to reflect the amendment to the catchline.

Section 104

Would amend section 362 of title 38 to increase by 7.3 percent the annual clothing allowance payable to a veteran receiving compensation whose disability requires the use of a prosthetic or orthopedic appliance or appliances, including a wheelchair, that tends to wear out or tear the veteran's clothing.

TITLE II—DEPENDENCY AND INDEMNITY COMPENSATION INCREASES AND OTHER IMPROVEMENTS FOR SURVIVORS

Section 201

Subsection (a) of section 201 would amend subsection (a) of section 411 of title 38, relating to dependency and indemnity compensation (DIC) for a surviving spouse of a veteran who died as a result of service-connected disability, to increase by 7.3 percent the DIC benefit payable monthly to such a surviving spouse. Under current law, DIC benefits are paid according to the pay grade—service rank—of the deceased veteran; and the amounts range from $277 per month for the surviving spouse of a veteran who had attained the grade of E–1 to $708 for the surviving spouse of a veteran who had attained the grade O–10. Those rates would be increased to $297 and $760, respectively under the Committee bill; and proportionate increases would be provided for in the intermediate rates and in the rates payable to the surviving spouses of veterans who had served in the positions specified in footnotes 1 and 2 to the table of grades and rates in existing section 411.

Subsection (b) of section 201 would amend subsection (b) of section 411 in order to increase substantially the dependents' allowance payable to a surviving spouse receiving DIC who has one or more children under the age of 18. If the surviving spouse has one child, the monthly DIC amount would be increased by $87, with $55 added for each additional child. Under current law, such increase is $33 for each child.

Subsection (c) of section 201 would amend subsection (c) of section 411 of title 38 in order to increase by 7.3 percent, from $83 to $89, the additional amount of DIC payable monthly to a surviving spouse who is a patient in a nursing home or helpless or blind or so nearly helpless or blind as to require the regular aid and attendance of another person.

Subsection (d) of section 201 would further amend section 411 of such title to add a new subsection (d), as follows:

New subsection (d) of section 411. Provides that the DIC payable monthly to a surviving spouse who is so disabled as to be permanently housebound, but not in need of regular aid and attendance, shall be increased by $45; and that, for purposes of this subsection, the requirement of "permanently housebound" would be met with the surviving spouse is substantially confined to such surviving spouse's house (ward or clinical areas, if institutionalized) or immediate premises by reason of disability or disabilities reasonably certain to continue for the remainder of such surviving spouse's life.

Section 202

Would amend section 413 to provide a 7.3-percent increase in the rates of DIC payable for the veteran's children where no surviving spouse is entitled. Currently, the rates are $140 for one child, $201 for two children, and $259 for three children, plus $52 per month for each additional child. The Committee bill would provide rates of $150, $216, and $278, respectively, with $56 for each additional child.

Section 203

Clause (1) of section 203 would amend section 414(a) to provide a 7.3-percent increase, from $83 to $89 per month, in the additional allowance payable to a child eligible for DIC who has attained the age of 18 and who became permanently incapable of self-support before reaching age 18.

Clause (2) of section 203 would amend section 414(b) to provide a 7.3 percent increase, from $140 to $150 per month, in the DIC payable, concurrently with the payment of DIC to a surviving spouse, to a surviving child who has attained the age of 18 and who became permanently incapable of self-support before reaching age 18.

Clause (3) of section 203 would amend section 414(c) to provide a 7.3-percent increase, from $71 to $76, in the additional DIC payable, concurrently with the payment of DIC to a surviving spouse, to a surviving child pursuing a course of education approved under existing section 104.

Section 204

Subsection (a) of section 204 would amend chapter 13 of title 38, entitled "Dependency and Indemnity Compensation for Service-Connected Deaths", to add a new section 405 ("Special determinations"), as follows:

New section 405: Subsection (a). Provides that in any case under chapter 11 in which the Administrator must determine a number of months, the calendar month in which a veteran is rated as totally disabled, a veteran died, or a child will attain age 21 shall be considered as one full month. This provision is necessary for the administration of new sections 411A and 414A, as added by sections 205 and 206, respectively, of the Committee bill.

Subsection (b). Provides that where a monthly rate would contain a fraction of a dollar, the amount would be rounded to the next higher dollar. This provision would facilitate the administration of new sections 411A and 414A, as added by sections 205 and 206, respectively, of the bill.

Subsection (b) of section 204 would amend the table of sections at the beginning of chapter 13 to reflect the insertion of new section 405.

Section 205

Subsection (a) of section 205 would amend chapter 13 of title 38 to add a new section 411A ("Benefits for surviving spouses of certain totally disabled veterans"), as follows:

New section 411A: Subsection (a). Provides that benefits under chapter 13 (the DIC chapter) shall be paid, as provided in subsection (b) of new section 411A, to the surviving spouse of a veteran who at the time of death had a disability or disabilities rated as total, not counting any increase in the rating by reason of "individual unemployability", where the veteran did not die as the result of the veteran's or surviving spouse's misconduct and the Administrator has not determined that the veteran's death resulted from service-connected disability. (In the schedule of rating disabilities found in chapter 4 of title 38 of the Code of Federal Regulations, section 4.16 provides that the Administrator may make a determination in an individual case that a veteran should be paid at the 100-percent rate, even though the veteran's disability or disabilities are such that his or her schedular rating is less than 100 percent.)

Paragraph (1) of subsection (b). Provides for benefits at the full DIC rate and in the same manner and to the same extent as DIC benefits are paid to the surviving spouses of veterans who died as the result of service-connected disabilities, to be paid to the surviving spouse of a veteran who, immediately prior to death, had been (1) continuously rated totally disabled for 20 or more years, or (2) rated totally disabled for 10 or more years continuously since the date of discharge.

Paragraph (2) of subsection (b). Provides for benefits to be paid to surviving spouses of veterans rated as totally disabled at the time of death for continuous periods other than those described in paragraph (1) of the new subsection. Benefits would be paid in the same manner and to the same extent as DIC benefits are paid to the surviving spouses of veterans who died as the result of service-connected disability, but only on the basis of either of the following alternatives, between which the surviving spouse could elect: (1) payment of the full DIC rate for the number of months equal to the number of months immediately preceding death, during which the veteran was continuously receiving compensation at the 100-percent rate, or (2) monthly payments for life based on the amount payable under option (1) spread out over the actuarially expected life of the surviving spouse (the monthly amount being calculated by multiplying the current applicable DIC monthly rate by the number derived by dividing the number of months the veteran had been continuously rated totally disabled by the estimated number of months of remaining life expectancy of the surviving spouse at the time of the veteran's death (based on standard mortality tables). Thus, for example, if the veteran was so rated for 168 months (9 years) and

the remaining life expectancy of the surviving spouse was 216 months (18 years) when the veteran died, the surviving spouse could elect to receive benefits (1) at the full DIC rate for 9 years or (2) at 50 percent (108÷216=50 percent) of the full DIC rate for as long as he or she lives. The surviving spouse's election of either of these options would be irrevocable once benefits are paid pursuant to the election, and in no case could benefits paid under this paragraph exceed DIC benefits.

Subsection (c). Provides that surviving spouses receiving benefits under this new section would be entitled to all payments under, and the benefit of, all other provisions of title 38, except DIC benefits, and other laws, to which surviving spouses receiving DIC benefits are entitled. Thus, benefits under new section 411A would be treated like DIC benefits for all purposes under law and there could be no duplicate payments of both DIC and benefits under the new section.

Subsection (b) of section 205 would amend the table of sections at the beginning of chapter 13 to reflect the insertion of new section 411A.

Section 206

Would amend section 412(b) of title 38, providing for the payment of DIC to surviving spouses who have children at VA pension rates under chapter 15 in those cases in which such pension would be payable at a higher rate, to clarify that a surviving spouse receiving benefits under the option set forth at subsection (b)(2)(B) of new 411A, as added by section 205(a) of the bill, (proportionate monthly benefits payable for life) could not receive greater section 411A benefits by virtue of existing section 412(b).

Section 207

Subsection (a) of section 207 would amend chapter 13 of title 38 to add a new section 414A ("Benefits for surviving children of certain totally disabled veterans"), as follows:

New section 414A: Subsection (a). Provides that benefits under chapter 13 shall be paid to the surviving children, where there is no surviving spouse, of a veteran who was rated totally disabled, as specified in new section 411A(a) (as added by section 206(a) of the bill), immediately prior to death and whose death has not been found by the VA to be the result of a service-connected disability. Such benefits would be payable to such surviving children (in equal shares) at the rates provided for in subsections (b) and (c) of this new section, but no such benefit would be payable to any child if the veteran's death resulted from the willful misconduct of the veteran or such child.

Paragraph 1 of subsection (b). Provides for benefits at the full DIC rate, and in the same manner and to the same extent as DIC benefits are paid to surviving children, to the child or children of a veteran who immediately prior to death had been (1) continuously rated totally disabled for 20 or more years, or (2) rated totally disabled for 10 or more years continuously from the date of discharge.

Paragraph 2 of subsection (b). Provides that in cases in which the veteran had been rated as totally disabled immediately prior to death but not for a period meeting the requirements of paragraph (1) of this subsection, benefits shall be paid in the same manner and to the

same extent as DIC benefits are paid to surviving children, except that the monthly amount payable to a surviving child would be determined by multiplying the current applicable DIC rate by the number derived by dividing the number of months the veteran was rated totally disabled by the number of months remaining before the child attains age 21. For example, if the veteran was rated totally disabled for 72 months (6 years) and the child is age 13, or 96 months (8 years) from attaining age 21 when the veteran dies, the child would receive benefits at 75 percent (72÷96=75 percent) of the DIC rate until the child reaches age 18, or age 23 if attending an approved school. However, in no case could benefits under new section 414A exceed the DIC benefit that would be payable if the Administrator had determined that the veteran's death had resulted from service-connected causes.

Subsection (c). Provides that benefits under new section 414A would be paid at the full DIC rate to any child of a veteran who was rated totally disabled at the time of death (not counting any increase in rating due to "individual unemployability") if the child became permanently incapable of self-support before reaching the age of 18.

Subsection (d). Provides that surviving children receiving benefits under this new section would be entitled to all payments under, and the benefit of all other provisions of law under title 38, except DIC benefits, and other laws, to which surviving children receiving DIC are entitled. Thus, benefits under new section 414A would be treated like DIC benefits for all purposes under law, and there could be no duplicate payments of both DIC and benefits under the new section.

Subsection (b) of section 207 would amend the table of sections at the beginning of chapter 13 to reflect the insertion of new section 414A.

Section 208

Would amend section 907 of title 38, relating to allowances for the funeral and burial of veterans whose deaths are service-connected, to increase the amount of the allowance payable, at the request of the survivors of such veterans, to $1,500 or the amount equal to the amount payable, under section 8134(a) of title 5, United States Code, for the funeral and burial expenses of a federal employee who died from an injury sustained in the performace of duty, whichever is the greater. Under current law, the allowance for the funeral and burial expenses for such veterans is payable and has been, since 1974, at the same amount, presently $800, as is authorized under section 8134 of title 5 (enacted in 1959).

Section 209

Would amend section 906(b) of title 38, relating to the provision of memorial markers, to authorize memorial markers to honor the memories of veterans whose remains are unrecoverable. Under current law, such markers are authorized only in the case of persons who die while on active duty and whose remains are not recoverable.

TITLE III—MISCELLANEOUS PROVISIONS

Section 301

Would amend subsection (b) of section 109 of title 38, relating benefits for certain discharged members of the armed forces of certain governments allied with the United States in World War to add a new paragraph (2), as follows:

New paragraph (2) of section 109(b): Subparagraph (A). Provides that service-connected disability compensation benefits under chapter 11 of title 38 shall be paid to any person who (1) after August 31, 1939, and before December 8, 1941, entered the active service of the armed forces of any government allied with the United States during World War II, (2) was at the time of entering such service a citizen of the United States, and (3) suffered a service-connected disability or disabilities during such service prior to the end of World War II. (The term "service-connected" is defined, for purposes of title 38, at section 101(16); and the definition here provided incorporates the term "in line of duty", which is defined in 105.) Compensation benefits would be paid in the same manner and to the same extent as to veterans of the Armed Forces of the United States as if the disability or disabilities had been suffered during active military, naval, or air service in the Armed Forces of the United States. Any benefits payable would be reduced by the amount of any benefits received from the allied government on account of the disability. No benefits would be paid, however, to any person who is not a citizen and resident of the United States.

Subparagraph (B). Authorizes the Administrator to make an independent evaluation of any disabilities compensable under subparagraph (A) of this new paragraph; provides that, in the case of a person receiving benefits from an allied government for a disability, service connection of that disability shall be conclusively persumed; and requires appropriate certifications and other proofs from any person applying for compensation under this new paragraph, including information concerning monetary benefits, if any, received from the allied government.

Section 302

Would amend section 562 of title 38, relating to the special pension paid to recipients of the Medal of Honor, to increase—from $100 to $200—the monthly rate of the special pension.

Section 303

Would amend subsection (a) of section 1902 of title 38, relating to the automobile assistance allowance payable to veterans with certain severe service-connected disabilities for the purchase of an automobile, to increase the amount of the allowance from $3,300 to $4,100.

Section 304

Subsection (a) of section 304 would require the Administrator of Veterans' Affairs, in consultation with the Secretary of Defense, to carry out a comprehensive study of the disability compensation awarded to, and health-care needs of, veterans who are former prisoners of war. The study must include—

(1) Descriptions and analyses of repatriation procedures for former prisoners of war, including physical examinations performed, and the adequacy of such procedures and the resultant medical records of former prisoners of war;

(2) The types and severity of disabilities particularly prevalent among former prisoners of war in various theaters at various times;

(3) A description and analysis of the VA's procedures in determining eligibility for disability compensation and health-care benefits, including analyses of the use of current statutory and

regulatory provisions specifically relating to former prisoners of war; and

(4) A comparison of benefits accorded former prisoners of war under the benefits programs of governments allied with the United States.

Subsection (b) of section 304 would require the VA to report to the Congress and the President, not later than March 1, 1979, the results of the study required by subsection (a) of this section, together with recommendations for administrative and legislative actions necessary to assure that former prisoners of war receive compensation benefits and health care for all disabilities reasonably attributable to their internment.

Section 305

Would amend the Act that created the American Battle Monuments Commission (36 U.S.C. 121) to add a provision requiring the continuation of the current ABMC practice of hiring U.S. citizens as cemetery superintendents and assistant superintendents for ABMC cemeteries. All such cemeteries are located overseas.

Section 306

Would direct the Secretary of Defense to place in the Memorial Amphitheater in Arlington National Cemetery a memorial plaque bearing the following inscription: "The people of the United States of America pay tribute to those members of its Armed Forces who served honorably in Southeast Asia during the Vietnam conflict." In order to honor further those members of the Armed Forces who lost their lives in hostile action in Southeast Asia during the Vietnam conflict, this section also directs the Secretary to place near the plaque an appropriate display of the medals, ribbons, and decorations associated with service in Southeast Asia during the Vietnam conflict.

Section 307

Would clarify that none of the provisions of the Committee bill, other than the amendments to title 38, United States Code, providing for new spending authority as defined in section 401(c)(2)(c) of the Congressional Budget Act of 1974 (Public Law 94–344), shall be deemed either directly or indirectly to authorize the enactment of new budget authority.

TITLE IV—EFFECTIVE DATES

Section 401

Would provide that the amendments made by the bill to title 38, United States Code, would be effective on October 1, 1978, and that other provisions would be effective upon enactment of the Committee bill.

Record of Votes Cast in Committee

Pursuant to section 133(b) of the Legislative Reorganization Act of 1946, as amended, announcement is made that the Members of the Committee on Veterans' Affairs, on July 27, 1978, voted, 9 to 0, in favor of a motion to report S. 2828, as amended, favorably to the Senate as follows:

YEAS—9 NAYS—0

Alan Cranston
Herman E. Talmadge
Jennings Randolph
Richard (Dick) Stone
John A. Durkin
Spark M. Matsunaga
Robert T. Stafford
Strom Thurmond
Clifford P. Hansen

Agency Reports

The Veterans' Administration submitted a March 21, 1978, letter transmitting an administration-requested bill, which became known as S. 2828 as introduced on April 5, 1978. In lieu of the report on Amendment No. 3067 from the Veterans' Administration, as requested by the Committee on June 26, 1978, the full statement of J. C. Peckarsky, Director, Compensation and Pension Service, appearing before the Committee on Veterans' Affairs on June 30, 1978, will be used to express the views of that agency. The transmittal letter, the 2 reports and a statement follow:

[No. 77]

COMMITTEE ON VETERANS' AFFAIRS, U.S. SENATE

VETERANS' ADMINISTRATION,
OFFICE OF THE ADMINISTRATOR OF VETERANS' AFFAIRS,
Washington, D.C., March 21, 1978.

HON. WALTER F. MONDALE,
President of the Senate,
Washington, D.C.

DEAR MR. PRESIDENT: Enclosed is a draft bill "To amend title 38, United States Code, to increase the rates of disability compensation for disabled veterans; to increase the rates of dependency and indemnity compensation for their surviving spouses and children; and for other purposes." It is respectfully requested that it be introduced and considered for enactment.

The measure, to be cited as the "Veterans' Disability Compensation and Survivor Benefits Act of 1978," would accomplish the following purposes:

a. Increase the basic rates of monthly compensation payable to veterans for service-connected disabilities, as well as the additional amounts authorized for veterans with dependents;

b. Increase the monthly rates of dependency and indemnity compensation (DIC) payable to surviving spouses and children of veterans whose deaths were service connected;

c. Equalize the criteria for protecting disability ratings;

d. Create a new additional award for those surviving spouses entitled to DIC who are rendered housebound by reason of disabilities;

e. Reduce administrative costs associated with recomputations and collection of overpayments necessary when a child is retroactively added to a class of dependents entitled to survivors' benefits; and

f. Eliminate duplication of certain DIC payments.

The basic purpose of the disability compensation program (chapter 11, title 38, United States Code), throughout its history, has been to provide relief for the impaired earning capacity of veterans disabled as the result of their military service. The amount payable varies according to the degree of disability which, in turn, is required by the law (38 U.S.C. § 355) to represent, to the extent practicable, the average impairment in earning capacity resulting from such disability or combination of disabilities in civil occupations. Additional compensation for dependents is payable to any veteran entitled to basic compensation for disability rated at not less than 50 percent.

Under chapter 13 of title 38, DIC payments are made to surviving spouses and certain parents and children of veterans who die of a

service-connected cause. For surviving spouses, the monthly rates are geared to the military pay grade of the deceased veteran, ranging from $277 for the surviving spouse of an E–1, to $708 for the surviving spouse of an O–10. The applicable surviving spouse's rate is increased by $33 for each child of the veteran under age 18. An additional amount of $83 is payable where the surviving spouse is (1) a patient in a nursing home, or (2) helpless or blind, or so nearly helpless or blind as to need or require the regular aid and attendance of another person.

For children, where no surviving spouse is entitled, the monthly rates range from $140 for one child to $259 for three children (plus $52 for each additional child). In the case of certain children specified under 38 U.S.C. § 414(a) who are permanently incapable of self-support, the applicable basic rate is increased by $83 for each child. Under 38 U.S.C. § 414(b) and (c), in cases wherein a surviving spouse is receiving benefits, monthly amounts of $140 and $71 are respectively paid separately to certain children of the veteran who are (1) permanently incapable of self-support, or (2) attending school between 18 and 23 years of age.

Title I of the draft bill relates to compensation payable to veterans for service-connected disabilities. Section 101 provides increases in the basic compensation rates of 5.8 percent. The additional amounts for dependents provided by 38 U.S.C. § 315 in cases of veterans with service-connected disabilities of at least 50 percent would also be increased approximately 5.8 percent by section 102 of the measure.

Title II of the draft bill is concerned with rates of dependency and indemnity compensation (DIC) payable to the survivors of deceased veterans. Section 201 provides increases of 5.8 percent in the monthly benefits payable to surviving spouses. The new basic rates would range from $293 to $749, according to the pay grade of the deceased veteran. The additional amount for each child under 18 would be raised from $33 to $35; and the special rate for aid and attendance for a qualified surviving spouse would go from $83 to $88. Sections 202 and 203 would also increase children's DIC rates by approximately 5.8 percent.

The needs of the disabled have been regularly recognized in the face of changing economic conditions. Since July 1952, there have been 13 compensation rate increases with the latest having become effective October 1, 1977. The surviving spouses and children of veterans who die of service-connected causes have also received similar increases. The rates of DIC payable to them were last increased effective October 1, 1977.

It has been the policy of the Government to recommend Veterans' Administration benefit increases for disability compensation and DIC programs periodically in order to insure that our programs remain responsive to changing economic conditions. The Veterans' Administration supports increases designed to offset the decline in purchasing power due to inflation which are based on changes in the Consumer Price Index (CPI). The 5.8 percent increase proposal contained in this draft bill is considered an accurate projection at this time of the increase in the cost of living between October 1, 1977, the date benefits were last increased, and October 1, 1978, the effective date of the

provisions of this bill if enacted. The estimated 5-year costs of this proposal are as follows:

Fiscal year:	Cost (in millions)
1979	$305.4
1980	305.9
1981	306.3
1982	306.4
1983	306.2

Title III contains miscellaneous proposals designed to improve the compensation and survivors' benefits programs. The first would equalize the currently different criteria which must be met before disability ratings become "protected," i.e., cannot be reduced. Section 110 of title 38 provides that a rating of total disability which has been "continuously in force" for at least 20 years shall not thereafter be reduced, unless found to be fraudulently obtained. The "continuously in force" requirement means that there must be an award of benefits based on the rating. However, the same section provides that a less than total disability need only be *rated* at or above a given level for 20 years before such evaluation becomes protected, absent a showing of fraud. Continuity of evaluation is the only requirement. It sometimes happens that a veteran with a less than total rating will elect not to receive Veterans' Administration compensation, as when a retired serviceman declines to waive a portion of retirement pay in order to receive compensation. In such cases, this agency does not further monitor the individual's disability during this period of waiver, and the disability may be subject to improvement. The mere lapse of time should not operate to protect ratings which were based upon possibly obsolete clinical data, and section 301 of the draft bill would require the criteria of having an award continuously in force for 20 years before less than total ratings would become protected. It is projected that this proposal would effect minimal savings.

Surviving spouses in receipt of DIC who are in need of the regular aid and attendance of another person by reason of disability are entitled to an additional award under subsection 411(c) of title 38. The Veterans' Administration recognizes, however, that certain of these survivors, while not so infirm as to need constant aid and attendance, may be sufficiently disabled so as to incur considerable expenses beyond those of the average DIC recipient. We therefore propose in section 302 of the bill an award for those surviving spouses receiving DIC who are rendered permanently housebound by reason of disabilities but who do not qualify for the aid and attendance award, at an intermediate rate of one-half that of the aid and attendance award. Assuming an increase of 5.8 percent in the current rates effective October 1, 1978 (as per section 201 of the draft bill), the estimated 5-year costs of this proposal are as follows:

Fiscal year:	Cost
1979	$500,000
1980	550,000
1981	580,000
1982	620,000
1983	660,000

Sections 303 and 304 of the draft bill are designed to alleviate administrative burdens which can result when additional dependents are added to the class to which survivors' benefits are being paid.

Where there is no surviving spouse eligible to receive DIC or death pension benefits, such benefits are payable to a veteran's children. The amounts payable depend upon the number of children, although to an extent the amounts per child decrease for each additional one (for example, the rate of DIC for one child under current law is $140, for two children $201, etc.). It happens on occasion that eligibility for an additional child is established after a veteran's other children have already been awarded such benefits. The entitlement of the additional child is often effective retroactively. A complication arises in that, while the total amount payable for the retroactive period is increased by reason of the additional child, the individual shares of each become less.

In such situations, an overpayment for the retroactive period results which must be remedied either by collection or withholding from some of the children to pay the others. Because the amounts involved in these adjustments are usually small and all the children are usually in the same family unit, the considerable administrative work generated serves little purpose.

Sections 303 and 304 would amend the law to pay in such cases the difference between the newly established entitlement and the amount already paid, without disturbing the previously paid amounts. This would not affect the total paid to the family unit. If all the children are not in the same family unit, the child or children added by the new award would receive a somewhat lesser amount for the past period for which the other children have already been paid. These proposals would eliminate the administrative detail required in establishing and liquidating pertinent overpayments of DIC and death pension. There would be no additional cost as a result of their enactment.

The final new proposal in the draft bill, section 305, is designed to eliminate certain duplications of DIC payments which can occur under present law. Additional amounts are payable to a surviving spouse for each child below age 18, and these payments are discontinued upon the child's 18th birthday. Under subsection 414(c) of title 38, DIC also becomes payable to the children in such families once they attain age 18 if they are attending school, and can continue until they reach age 23 while they continue to attend. This entitlement becomes effective the first day of the month of their 18th birthdays. Hence, for the period from the first of that month until the birthday of the child, a dual award is being paid. Section 305 would eliminate this duplicate payment by reducing the child's award for the month of his or her birthday by the amount of the surviving spouse's additional award for the same month attributable to the child.

It is estimated that the yearly savings to be effected by section 305 would be approximately $50,000.

Section 306 of the draft bill provides that its provisions would become effective October 1, 1978.

Advice has been received from the Office of Management and Budget that there is no objection to the submission of the draft legislation and that its enactment would be in accord with the program of the President.

Sincerely,

MAX CLELAND,
Administrator.

Enclosure.

A BILL To amend title 38, United States Code, to increase the rates of disability compensation for disabled veterans; to increase the rates of dependency and indemnity compensation for their surviving spouses and children; and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Veterans' Disability Compensation and Survivor Benefits Act of 1978."

TITLE I—VETERANS' DISABILITY COMPENSATION RATES

SEC. 101. (a) Section 314 of title 38, United States Code, is amended—

(1) by striking out in subsection (a) "$41" and inserting in lieu thereof "$43";

(2) by striking out in subsection (b) "$75" and inserting in lieu thereof "$79";

(3) by striking out in subsection (c) "$113" and inserting in lieu thereof "$120";

(4) by striking out in subsection (d) "$155" and inserting in lieu thereof "$164";

(5) by striking out in subsection (e) "$216" and inserting in lieu thereof "$229";

(6) by striking out in subsection (f) "$272" and inserting in lieu thereof "$288";

(7) by striking out in subsection (g) "$322" and inserting in lieu thereof "$341";

(8) by striking out in subsection (h) "$373" and inserting in lieu thereof "$395";

(9) by striking out in subsection (i) "$419" and inserting in lieu thereof "$443";

(10) by striking out in subsection (j) "$754" and inserting in lieu thereof "$798";

(11) by striking out in subsection (k) "$937" and "$1,312" each time they appear and inserting in lieu thereof "991" and "$1,388"; respectively;

(12) by striking out in subsection (l) "$937" and inserting in lieu thereof "$991";

(13) by striking out in subsection (m) "$1,032" and inserting in lieu thereof "$1,092";

(14) by striking out in subsection (n) "$1,172" and inserting in lieu thereof "$1,240";

(15) by striking out in subsections (o) and (p) "$1,312" each time it appears and inserting in lieu thereof "$1,388";

(16) by striking out in subsection (r) "$563" and inserting in lieu thereof "$596"; and

(17) by striking out in subsection (s) "$843" and inserting in lieu thereof "$892".

(b) The Administrator of Veterans' Affairs may adjust administratively, consistent with the increases authorized by this section, the rates of disability compensation payable to persons within the purview of section 10 of Public Law 85–857 who are not in receipt of compensation payable pursuant to chapter 11 of title 38, United States Code.

SEC. 102. Section 315(1) of title 38, United States Code, is amended—

(1) by striking out in subparagraph (A) "$46" and inserting in lieu thereof "$49";

(2) by striking out in subparagraph (B) "$77" and inserting in lieu thereof "$81";

(3) by striking out in subparagraph (C) "$98" and inserting in lieu thereof "$104";

(4) by striking out in subparagraph (D) "$120" and "$22" and inserting in lieu thereof "$127" and "$23", respectively;

(5) by striking out in subparagraph (E) "$30" and inserting in lieu thereof "$32";

(6) by striking out in subparagraph (F) "$52" and inserting in lieu thereof "$55";

(7) by striking out in subparagraph (G) "$77" and "$22" and inserting in lieu thereof "$81" and "$23", respectively;

(8) by striking out in subparagraph (H) "$37" and inserting in lieu thereof "$39";

(9) by striking out in subparagraph (I) "$83" and inserting in lieu thereof "$88"; and

(10) by striking out in subparagraph (J) "$70" and inserting in lieu thereof "$74".

TITLE II—SURVIVORS' DEPENDENCY AND INDEMNITY COMPENSATION RATES

SEC. 201. Section 411 of title 38, United States Code, is amended to read as follows:

"§ *411. Dependency and indemnity compensation to a surviving Spouse*

(a) Dependency and indemnity compensation shall be paid to a surviving spouse, based on the pay grade of the person upon whose death entitlement is predicated, at monthly rates set forth in the following table:

Pay grade:	*Monthly rate*	"Pay grade:	*Monthly rate*
E–1	$293	W–4	$420
E–2	303	O–1	370
E–3	310	O–2	383
E–4	329	O–3	411
E–5	339	O–4	433
E–6	346	O–5	477
E–7	363	O–6	536
E–8	383	O–7	582
E–9	[1] 400	O–8	637
W–1	370	O–9	685
W–2	385	O–10	[2] 749
W–3	397		

[1] If the veteran served as sergeant major of the Army, senior enlisted advisor of the Navy, chief master sergeant of the Air Force, sergeant major of the Marine Corps, or master chief petty officer of the Coast Guard, at the applicable time designated by sec. 402 of this title, the surviving spouse's rate shall be $431.

[2] If the veteran served as Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, or Commandant of the Marine Corps, at the applicable time designated by sec. 402 of this title, the surviving spouse's rate shall be $803.

"(b) If there is a surviving spouse with one or more children below the age of eighteen of a deceased veteran, the dependency and in-

demnity compensation paid monthly to the surviving spouse shall be increased by $35 for each such child.

"(c) The monthly rate of dependency and indemnity compensation payable to a surviving spouse shall be increased by $88 if the spouse is (1) a patient in a nursing home or (2) helpless or blind, or so nearly helpless or blind as to need or require the regular aid and attendance of another person."

SEC. 202. Section 413 of title 38, United States Code, is amended as follows:

(1) by striking out "$140" in subclause (1) and inserting "$148" in lieu thereof;

(2) by striking out "$201" in subclause (2) and inserting "$213" in lieu thereof;

(3) by striking out "$259" in subclause (3) and inserting "274" in lieu thereof; and

(4) by striking out "$259" and "$52" in subclause (4) and inserting in lieu thereof "274" and "$55," respectively.

SEC. 203. Section 414 of title 38, United States Code, is amended—

(1) by striking out in subsection (a) "$83" and inserting in lieu thereof "$88";

(2) by striking out in subsection (b) "$140" and inserting in lieu thereof "$148"; and

(3) by striking out in subsection (c) "$71" and inserting in lieu thereof "$75".

TITLE III—MISCELLANEOUS AND EFFECTIVE DATE PROVISIONS

SEC. 301. Section 110 of title 38, United States Code, is amended to read as follows:

"*§ 110. Preservation of Disability Ratings*

"A rating of total disability or permanent total disability which has been made for compensation, pension or insurance purposes under laws administered by the Veterans' Administration, and which has been continuously in force for twenty or more years, shall not be reduced thereafter except upon a showing that such rating was based on fraud. A disability rating for compensation purposes under such laws which has been continuously in force at or above any evaluation for twenty or more years shall not thereafter be reduced below such evaluation, except upon a showing that such rating was based on fraud. The mentioned period shall be computed from the date determined by the Administrator as the date on which the status commenced for rating purposes."

SEC. 302. Section 411 of title 38, United States Code, is amended by adding at the end thereof the following new subsection (d):

"(d) The monthly rate of dependency and indemnity compensation payable to a surviving spouse shall be increased by $44 if the spouse is, by reason of disability, permanently housebound but does not qualify for the aid and attendance allowance under subsection (c) of this section. For purposes of this subsection, the requirement of "permanently housebound" will be met when the individual is substantially confined to his or her house (ward or clinical areas, if institutionalized) or immediate premises due to a disability or disabilities which

it is reasonably certain will remain throughout the individual's lifetime."

SEC. 303. Section 413 of title 38, United States Code, is amended by inserting "(a)" immediately before "Whenever", and by adding the following new subsection (b):

"(b) If dependency and indemnity compensation has been awarded to a veteran's child or children under this section, and the entitlement of an additional child is later established effective retroactively, the retroactive award payable to the additional child shall equal the difference between the total of the increased award for the retroactive period and the prior total award for that period."

SEC. 304. (a) Subchapter III of chapter 15, title 38, United States Code, is amended by adding the following new section 531 immediately before the subtitle "*Wars Before World War I*":

"§ *531. Retroactive entitlements of children of veterans of all periods of war.*

"For purposes of this subchapter and for purposes of the prior pension law in effect June 30, 1960, if pension has been awarded to a veterans' surviving child or children, and the entitlement of an additional child is later established effective retroactively, the retroactive award payable to the additional child shall equal the difference between the total of the increased award for the retroactive period and the prior total award for the same period."

(b) The table of sections at the beginning of such chapter 15 is amended by inserting the following after the title for subchapter III and before the subtitle "*Wars Before World War I*":

"531. Retroactive Entitlements of Children of Veterans of all Periods of War."

SEC. 305. Subsection 414(c) of title 38, United States Code, is amended by adding the following at the end thereof:

"However, if during the month in which such child reaches age 18 he or she is also being considered a child below age 18 for purposes of additional depedency and indemnity compensation for a surviving spouse under subsection 411(b) of this chapter, the amount of the child's award for that month will be reduced by an amount equal to the surviving spouse's additional award, for the same month, attributable to the child."

SEC. 306. The provisions of this Act shall become effective on October 1, 1978.

[No. 48]

COMMITTEE ON VETERANS' AFFAIRS, U.S. SENATE

VETERANS' ADMINISTRATION,
OFFICE OF THE ADMINISTRATOR OF VETERANS' AFFAIRS,
Washington, D.C., July 22, 1977.

Hon. ALAN CRANSTON,
Chairman, Committee on Veterans' Affairs,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: We are pleased to respond to your request for a report on S. 379, 95th Congress.

The proposal would amend section 360 of title 38, United States Code, to provide that where a veteran has suffered, as the result of a service-connected disability, the loss or loss of use of one leg, foot, arm or hand and, as the result of a non-service-connected disability, not the result of his own willful misconduct, has suffered the loss or loss of use of the other leg, foot, arm or hand, the veteran shall be paid the applicable rate of compensation as if the loss of paired limbs, both feet or both hands were the result of service-connected disability.

Currently, section 360 of title 38, United States Code, provides that a veteran who has suffered (1) service-connected blindness in one eye and then blindness in the other eye as a result of a non-service-connected disability not due to his own willful misconduct, or (2) service-connected loss or loss of use of one kidney and suffers severe involvement of the other kidney such as to cause total disability, as the result of a non-service-connected disability not the result of his own willful misconduct, or (3) service-connected total deafness in one ear and then suffers total deafness in the other ear as the result of a non-service-connected disability not the result of his own willful misconduct, the veteran shall be paid the applicable rate of compensation as if his blindness in both eyes or bilateral kidney involvement or total deafness in both ears were the result of service-connected disability.

The enactment of S. 379 would, in certain situations, increase the rates of compensation payable under sections 314 and 315 of title 38, United States Code, based upon an increase in the recognized level of disability, and by giving rise to eligibility for the several statutory awards provided therein for specified disabilities or combinations of disabilities. It could also have the effect of giving rise to entitlement to the annual clothing allowance under section 362, and to other benefits including specially adapted housing under chapter 21 and to allowances for automobiles or adaptive automotive equipment under chapter 39.

The function of the paired organs currently covered by this section cannot in any way be restored by prosthetic appliances. The function of a lost leg, foot, arm or hand, however, can generally be partially re-

stored by prosthetic appliances. Of course, in those rare instances in which the function of both arms is lost at the shoulder level, or function of both legs lost at hip level, the use of prostheses may be totally impossible. In such rare cases an analogy would exist; however, in the majority of instances involving loss or loss of use of a leg, foot, arm or hand, a reasonable degree of function can be regained through properly fitted prostheses. Levels and degrees of loss vary widely. They may extend only to the hand or foot (where quite effective restoration of function by prosthetic devices is possible) or to any combination of losses affecting intermediate joints such as wrists and elbows, or ankles or knees, and on up to hip or shoulder level.

It has always been the basic purpose of disability compensation, except in the very limited areas, covered by 38 U.S.C. 360, to compensate veterans for disabilities actually incurred in or aggravated by military service, either directly or presumptively. The enactment of the proposed bill, particularly as now constituted, would be a further departure from this long accepted concept. It would in a way be precedential for demands for like treatment by veterans suffering from all manner of service-connected and non-service-connected disabilities, who contend that the interaction of one upon the other, or the combination of both, are such that they are rendered totally disabled.

For these reasons, the Veterans' Administration opposes enactment of S. 379.

It is our estimate that the cost of S. 379, if enacted, would be approximately $1 million per year.

Advice has been received from the Office of Management and Budget that there is no objection to the presentation of this report from the standpoint of the administration's program.

Sincerely,

MAX CLELAND, *Administrator.*

[No. 96]

COMMITTEE ON VETERANS' AFFAIRS, U.S. SENATE

VETERANS' ADMINISTRATION,
OFFICE OF THE ADMINISTRATOR OF VETERANS' AFFAIRS,
Washington, D.C., June 26, 1978.

Hon. ALAN CRANSTON,
Chairman, Committee on Veterans' Affairs, United States Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to the request of the Veterans' Administration to furnish its views and recommendations on H.R. 12257, 95th Congress, a bill to amend title 38, United States Code, to authorize the Administrator of Veterans' Affairs to furnish cemetery memorial headstones or markers to commemorate veterans who die after being honorably discharged and whose remains are not recovered or identified.

H.R. 12257 is a recently reintroduced bill for H.R. 3863 and passed the House on June 19, 1978.

Section 906(b) of title 38, United States Code, authorizes the furnishing of memorial markers only to veterans dying in the service and whose remains have not been recovered or identified or were buried at sea. H.R. 12257 would remove the requirement that death occur while in the service, thereby making the law applicable to all veterans who meet the eligibility requirements provided in section 101(2) of title 38, United States Code. The Veterans' Administration believes that the furnishing of headstones or markers and the associated memorialization should continue to be provided only for veterans dying in the service in cases where the remains were not recovered or identified or were buried at sea.

The enactment of this bill would have no substantial budgetary impact. Statistics from the Vietnam war years, where active duty casualties with unrecoverable remains were at their highest, show the greatest cost per year during the 12-year period from 1965 as being only $21,115.

An estimate of the 5-year fiscal cost (fiscal year 1979–1983) of this bill as contemplated by the Legislative Reorganization Act of 1970 is as follows:

	Cost
Fiscal year:	
1979	$17,600
1980	18,400
1981	19,200
1982	20,000
1983	22,200
Total	97,400

In view of the foregoing, the Veterans' Administration opposes the enactment of H.R. 12257, 95th Congress.

We are advised by the Office of Management and Budget that there is no objection to the presentation of this report from the standpoint of the administration's program.

Sincerely,

MAX CLELAND,
Administrator.

STATEMENT OF J. C. PECKARSKY, DIRECTOR, COMPENSATION AND PENSION SERVICE, DEPARTMENT OF VETERANS BENEFITS, VETERANS' ADMINISTRATION

Mr. Chairman and Members of the Subcommittee: I am pleased to be here to testify for the Veterans Administration regarding the bills under consideration today. I should like first to discuss S. 2828.

This bill embodies a draft proposal submitted by the Veterans Administration to the President of the Senate March 21, 1978, with the request that it be introduced and considered for enactment. It would accomplish the following purposes:

(*a*) Increase the basic rates of monthly compensation payable to veterans for service-connected disabilities, as well as the additional amounts authorized for veterans with dependents;

(*b*) Increase the monthly rates of dependency and indemnity compensation (DIC) payable to surviving spouses and children of veterans whose deaths were service connected;

(*c*) Equalize the criteria for protecting disability ratings;

(*d*) Create a new additional award for those surviving spouses entitled to DIC who are rendered housebound by reason of disabilities;

(*e*) Reduce administrative costs associated with recomputations and collection of overpayments necessary when a child is retroactively added to a class of dependents entitled to survivors' benefits; and

(*f*) Eliminate duplication of certain DIC payments.

The basic purpose of the disability compensation program (chapter 11, title 38, United States Code), throughout its history, has been to provide relief for the impaired earning capacity of veterans disabled as the result of their military service. The amount payable varies accord- to the degree of disability which, in turn, is required by the law (38 U.S.C. § 355) to represent, to the extent practicable, the average impairment in earing capacity resulting from such disability or combination of disabilities in civil occuations. Additional compensation for dependents is payable to any veteran entitled to basic compensation for disability rated at not less than 50 percent.

Under chapter 13 of title 38, DIC payments are made to surviving spouses and certain parents and children of veterans who die of a service-connected cause. For surviving spouses, the monthly rates are geared to the military pay grade of the deceased veteran.

Title I of S. 2828 relates to compensation payable to veterans for service-connected disabilities. Section 101 provides increases in the basic compensation rates of 5.8 percent. The additional amounts for dependents in cases of veterans with service-connected disabilities of at least 50 percent would also be increased approximately 5.8 percent by section 102 of the measure.

Title II of the bill is concerned with rates of dependency and indemnity compensation (DIC) payable to the survivors of deceased veterans. Section 201 provides increases of 5.8 percent in the monthly benefits payable to surviving spouses. The new basic rates would range from $293 to $749, according to the pay grade of the deceased veteran. The additional amount for each child under 18 would be raised from $33 to $35; and the special rate for aid and attendance

for a qualified surviving spouse would go from $83 to $88. Sections 202 and 203 would also increase children's DIC rates by approximately 5.8 percent.

It has been the policy of the Government to recommend Veterans' Administration benefit increases for disability compensation and DIC programs periodically in order to insure that our programs remain responsive to changing economic conditions. The Veterans' Administration supports increases designed to offset the decline in purchasing power due to inflation which are commensurate with changes in the Consumer Price Index (C.P.I.). When the Veterans' Administration in March 1978 proposed this 5.8 percent increase, that percentage reflected the projections we had at that time of the increase in the cost of living which could be anticipated for the period October 1, 1977, the date these benefits were last increased, to October 1, 1978, the effective date proposed for S. 2828. Should these projections prove to be inaccurate, we would support a change in rates consistent with, but not exceeding, an updated anticipated C.P.I. figure as of the effective date of the increase. The estimated costs of the 5.8-percent increase in S. 2828 would range from $305.4 million in fiscal year 1979 upward to $306.2 million in fiscal year 1983.

Title III of S. 2828 contains miscellaneous proposals designed to improve the compensation and survivors' benefits programs. The first would equalize the currently different criteria which must be met before disability ratings become "protected," i.e., cannot be reduced. Section 110 of title 38 provides that a rating of total disability which has been "continuously in force" for at least 20 years shall not thereafter be reduced, unless found to be fraudulently obtained. The "continuously in force" requirement means that there must be an award of benefits based on the rating. However, the same section provides that a less than total disability need only be *rated* at or above a given level for 20 years before such evaluation becomes protected, absent a showing of fraud. Continuity of evaluation is the only requirement. It sometimes happens that a veteran with a less than total rating will elect not to receive Veterans' Administration compensation, as when a retired serviceman declines to waive a portion of retirement pay in order to receive compensation. In such cases, this agency does not further monitor the individual's disability during this period of waiver, and the disability may be subject to improvement. The mere lapse of time should not operate to protect ratings which were based upon possibly obsolete clinical data, and section 301 of the bill would require having an award continuously in force for 20 years before less than total ratings would become protected. It is projected that this proposal would effect minimal savings.

Surviving spouses in receipt of DIC who are in need of the regular aid and attendance of another person by reason of disability are entitled to an additional award under subsection 411(c) of title 38. The Veterans' Administration recognizes, however, that certain of these survivors, while not so infirm as to need regular aid and attendance, may be sufficiently disabled so as to incur considerable expenses beyond those of the average DIC recipient. The VA, therefore, proposed an award for those surviving spouses receiving DIC who are rendered permanently housebound by reason of disabilities but who do not qualify for the aid and attendance award, at an intermediate

rate of one-half that of the aid and attendance award. The estimated cost of this proposal, section 302 of the bill, would be $500,000 in fiscal year 1979, increasing annually to $660,000 in fiscal year 1983.

Sections 303 and 304 of the bill are designed to alleviate administrative burdens which can result when additional dependents are added to the class to which survivors' benefits are being paid. Where there is no surviving spouse eligible to receive DIC or death pension benefits, such benefits are payable to a veteran's children. The amounts payable depend upon the number of children, although to an extent the amounts per child decrease for each additional one (for example, the rate of DIC for one child under current law is $140, for two children $201, etc.). It happens on occasion that eligibility for an additional child is established after a veteran's other children have already been awarded such benefits. The entitlement of the additional child is often effective retroactively. A complication arises in that, while the total amount payable for the retroactive period is increased by reason of the additional child, the individual shares of each become less.

In such situations, an overpayment for the retroactive period results which must be remedied either by collection or withholding from some of the children to pay the others. Because the amounts involved in these adjustments are usually small and all the children are usually in the same family unit, the considerable administrative work generated serves little purpose.

Sections 303 and 304 of S. 2828 would amend the law to pay in such cases the difference between the newly established entitlement and the amount already paid, without disturbing the previously paid amounts. There would be no additional cost as a result of their enactment.

The final new proposal in S. 2828, section 305, is designed to eliminate certain duplications of DIC payments which can occur under the present law. Additional amounts are payable to a surviving spouse for each child below age 18, and these payments are discontinued upon the child's 18th birthday. Under subsection 414(c) of title 38, DIC also becomes payable to the children in such families once they attain age 18 if they are attending school, and can continue until they reach age 23 while they continue to attend. This entitlement becomes effective the first day of the month of their 18th birthdays. Hence, for the period from the first of that month until the birthday of the child, a dual award is being paid. Section 305 would eliminate this duplicate payment by reducing the child's award for the month of his or her birthday by the amount of the surviving spouse's additional award for the same month attributable to the child.

It is estimated that the yearly savings to be effected by section 305 would be approximately $50,000.

Section 306 of S. 2828 provides that its provisions would become effective October 1, 1978.

We recommend enactment of S. 2828 as introduced.

Two other bills under discussion today, S. 379 and H.R. 6501, would both expand the reaches of section 360 of title 38, United States Code. This section currently provides that a veteran who has suffered (1) service-connected blindness in one eye and then blindness in the other eye as a result of a non-service-connected disability not due to such veteran's willful misconduct, or (2) service-connected loss or loss of use of one kidney and suffers severe involvement of the

other kidney as to cause total disability, as the result of a non-service-connected disability not the result of such veteran's willful misconduct, or (3) service-connected total deafness in one ear and then suffers total deafness in the other ear as the result of a non-service-connected disability not the result of such veteran's willful misconduct, shall be paid the applicable rate of compensation as if the blindness in both eyes or bilateral kidney involvement or total deafness in both ears were the result of service-connected disability.

S. 379 would amend this section to provide that where a veteran has suffered, as the result of a service-connected disability, the loss or loss of use of one leg, foot, arm or hand and, as the result of a non-service-connected disability, not the result of the veteran's willful misconduct, has suffered the loss or loss of use of the other leg, foot, arm or hand, the veteran shall be paid the applicable rate of compensation as if the loss of paired limbs, both feet or both hands were the result of service-connected disability. H.R. 6501 is similar, although the language used refers to hands and feet and not arms and legs, and it is not altogether clear whether it would extend to entire limbs as well. S. 379 is clearer in this regard.

The enactment of either S. 379 or H.R. 6501 would increase the rates of compensation payable under sections 314 and 315 of title 38, United States Code, based upon an increase in the recognized level of disability, and by giving rise to eligibility for the several statutory awards provided therein for specified disabilities or combinations of disabilities.

The function of the paired organs currently covered by section 360 cannot in any way be restored by prosthetic appliances. The function of a lost leg, foot, arm or hand, however, can generally be partially restored by prosthetic appliances. Of course, in those rare instances in which the function of both arms is lost at the shoulder level, or function of both legs lost at hip level, the use of prostheses may be totally impossible. In such rare cases, an analogy would exist; however, in the majority of instances involving loss or loss of use of a leg, foot, arm or hand, a reasonable degree of function can be regained through properly fitted prostheses. Levels and degrees of loss vary widely. They may extend only to the hand or foot (where quite effective restoration of function by prosthetic devices is possible) or to any combination of losses affecting intermediate joints such as wrists and elbows, or ankles or knees, and on up to hip or shoulder level.

It has always been the basic purpose of disability compensation, except in the very limited areas, covered by section 360, to compensate veterans for disabilities actually incurred in or aggravated by military service, either directly or presumptively. The enactment of the proposed bill, particularly as now constituted, would be a further departure from this long accepted concept. It could be considered precedential for demands for like treatment by veterans suffering from all manner of service-connected and non-service-connected disabilities, who contend that the interaction of one upon the other, or the combination of both, are such that they are rendered totally disabled.

For these reasons, the Veterans' Administration opposes enactment either of S. 379 or H.R. 6501.

It is our estimate that the cost of either bill, if enacted, would be approximately $1 million per year. Costs generated from future legislation building on the precedential nature of either of these measures could be quite expensive, however.

S. 3187 proposes to extend entitlement for dependency and indemnity compensation, currently payable only for service-connected deaths, to the survivors of all other veterans who at the time of death had a permanent and total disability rating due to service-connected disability for at least 10 years or continuously since service discharge. Such awards would be payable only if death were due to natural causes, and would not be payable to a surviving spouse married to a veteran for less than 5 years.

S. 1929 proposes that, for the purpose of payment of dependency and indemnity compensation (DIC), service connection for the cause of death shall be presumed in the case of a blinded veteran who had service-connected disability rated permanent and total under 38 U.S.C. § § 314 (*l*), (m), (n), (o) or (p) for at least 1 year immediately preceding death. It is further provided that death must not be due to misconduct on the part of the veteran, and the presumption does not apply so as to give rise to entitlement to a surviving spouse who was married to the veteran less than two years before the veteran's death.

It is not altogether clear whether S. 1929, as drafted, would require that a veteran's blindness be a service-connected disability, or whether it would be enough to give rise to the presumption that he or she have non-service-connected blindness and otherwise qualify for a permanent and total rating under 38 U.S.C. §§ 314 (*l*), (m), (n), (o) or (p).

The purpose of the current dependency and indemnity compensation program is to provide partial compensation to designated survivors of veterans dying of service-connected causes for the loss in financial support resulting from such deaths. It constitutes recognition by the Government of its direct responsibility for the veteran's death. Non-service-connected death pension based upon need is payable by the Veterans' Administration to qualified surviving spouses and children of war veterans. In cases of service-connected deaths, dependency and indemnity compensation is payable to surviving spouses, parents and children of veterans of wartime or peacetime service. Payment of DIC to surviving spouses and children is made without regard to need, and at higher rates than are generally applicable for pension in non-service-connected cases.

The Veterans' Administration has been fair and compassionate in determining service connection for the cause of death. Veterans' Administration regulations provide that service-connected disabilities need not be the principal cause of death to warrant a finding of service connection for cause of death, but rather only that they contribute materially to cause death. For example, even when non-service-connected disabilities are the primary cause of death, consideration is given to whether any coexisting service-connected conditions materially accelerated death. If so, the death will be considered service connected. Also by regulation, where at the time of death the veteran had a service-connected disability rated 100 percent disabling, careful consideration is given as to whether there were resulting debilitating effects and general impairment of health to an extent that would render a person materially less capable of resisting the effects of the

ner disease or injury primarily causing death. Where the service-nnected condition affects a vital organ, as distinguished from muscu- or skeletal functions, and is evaluated as 100 percent disabling, bilitation is *assumed*.

The Veterans' Administration has conducted studies of cases of terans rated 100 percent at time of death. The latest study com-eted March 1976 showed, in 86 percent of these cases, death was ted service-connected. What was important in the study findings s that, in the 14 percent not rated as death due to service, about o-thirds were cases in which the veteran was not 100 percent dis-led under basic rating schedule criteria, but was rated at that rcentage due to unemployability.

Enactment of either of the bills, S. 3187 or S. 1929, would consti-te a major departure from the current policy of Congress to main-in separate systems of monetary benefits for deaths due to service nd those unrelated to service. Their enactment would be tantamount superimposing on the present pension program new non-service-nnected death benefits, and would result in new and discriminatory enefits for surviving dependents of certain disabled veterans.

Surely a greater debt is owing survivors of those veterans who have, s a result of their service-connected disabilities, made the ultimate acrifice. Furthermore, we would consider it unjustifiably discrimi-atory to extend DIC entitlement based upon certain non-service-onnected deaths and not others.

For the foregoing reasons, the Veterans' Administration opposes nactment of S. 3587 and S. 1929.

It is our estimate that the cost of each of the bills, if enacted, would e less than $1 million per year.

You have also asked for our views with regard to an immensely complicated proposal to provide for entitlement under chapter 13, title 38, United States Code (the DIC chapter), for the survivors of veterans who were rated 100-percent service-connected disabled at the time of death when it cannot be determined that the veteran had died of service-connected causes, with payments based on either the number of years a veteran was rated 100-percent service-connected disabled or alternatives using number of months of payments to the veteran at the 100-percent rate or the surviving spouse's life expect-ancy or variations thereof.

As we have stated, the only issue to be determined is, "Was the veteran's service-connected disability, no matter what percentage, in any way a factor affecting death?" If so, service-connected benefits should be paid, at the specified rate. These proposals in addition to the departure from the policy of providing separate payments for service-connected and non-service-connected benefits would provide a com-plicated system of payments.

For the reasons stated with respect to S. 3187, the Veterans' Admin-istration opposes most strenuously the enactment of this proposal.

I should like next to discuss the issue of reducing from 50 percent to 40 percent the degree of service-connected disability required to entitle a veteran to additional compensation for dependents.

Currently, under section 315 of title 38, United States Code, addi-tional amounts of compensation for dependents (spouses, children and dependent parents) are payable only to those veterans whose service-connected disabilities are rated not less than 50 percent disabling.

Additional disability compensation for dependents was first authorized by Public Law 877, 80th Congress, approved July 2, 1948. That act was the product of extensive study and consideration by Congress. The legislative history indicates that one of the reasons for limiting the benefits provided by that act to persons 60 percent or more disabled was based on the fact that veterans of this group, because of the serious nature of their disabilities, are not generally in a position to supplement their compensation payments by income from steady employment. Upon further consideration of this subject in 1949, the necessary degree of disability for entitlement to additional compensation was reduced to 50 percent by section 4 of Public Law 339, 81st Congress.

Veterans with disabilities rated less than 50 percent are generally able to supplement their compensation payments with other income. Consequently, we see no justification for the proposed additional compensation for veterans with lesser degrees of disability.

We estimate the first-year cost of this proposal is $45 million, increasing to $47 million in fiscal year 1983.

Another issue on which you have requested the agency's view is a proposal to increase the amounts of additional compensation payable for dependents to a veteran whose service-connected disability is rated 50 percent or more and to equalize the amount payable for the first dependent as between a surviving spouse and a child. Under current law, the additional amount per month, where the veteran is rated 100 percent, is $46 for a spouse only and $30 for one child when there is no spouse. Under the proposal, the amount in each case would be $87 monthly with $55 for each additional child. The amounts would be less in proportion to the veteran's lesser disability rating from 90 percent down through 50 percent as is the case under current law.

As stated before, the purpose of compensation is to offset the reduced earning capacity of a veteran resulting from a service-connected disability. The additional compensation for dependents, according to legislative history, is an "add-on" because it was considered that a veteran with such serious disabilities is usually not in a position to supplement his compensation by income from steady employment. These rates have been increased regularly commensurate with the basic compensation rates. This proposal would increase the rate for a spouse by about 90 percent and for one child where there is no spouse by 190 percent.

We have not yet had the opportunity to prepare a cost estimate of this proposal.

Another proposal would provide that veterans entitled to the aid and attendance allowance under subsection 314(r) of title 38, United States Code, who are in need of special aid and attendance shall receive $900 per month for such purpose (in addition to other compensation) if the Administrator finds that, in the absence of care being provided by another person, the veteran would require hospital or nursing home care.

The criteria for determining the need for regular aid and attendance are contained in title 38, Code of Federal Regulations, section 3.352. They include such factors as the inability to dress or undress, or to keep clean, or the need for frequent adjustment of a special prosthetic or orthopedic appliance which, because of the nature of the

disability, cannot be done without the aid of another person. Being bedridden is another basis for determining the need for regular aid and attendance.

Subsection 314(r) of title 38, United States Code, was initially enacted into law by Public Law 85–782, 85th Congress (effective January 1, 1959). Congress thereby recognized that, by virtue of the severity of their disabilities, veterans entitled under subsection 314(r) would have increased expenses by reason of their need for regular aid and attendance, which in some cases might include constant medical aid and attendance and, accordingly, authorized an aid and attendance allowance of $150, which has since been increased periodically. The present aid and attendance allowance of $563 under this subsection was set by Public Law 95–117.

We do not believe that there should be a two-tiered system of payment for those veterans currently entitled to the subsection 314(r) aid and attendance allowance. It has not been demonstrated that veterans currently entitled to the subsection 314(r) aid and attendance allowance and who without such aid and attendance would require hospital or nursing home care need additional assistance beyond the current aid and attendance allowance rate.

The need for aid and attendance is already compensated in the ratings and payments for the severely disabled in title 38, United States Code, subsections 314(*l*) through (n). The additional allowance under subsection 314(r) provides a second level of aid and attendance support. This proposal would pyramid the aid and attendance allowances and, in effect, would provide for "triple-dipping."

Compensation is intended to provide for the economic loss of earning power resulting from service-connected disability. The aid and attendance allowance is a noneconomic add-on based on unusual circumstances. An additional level of aid and attendance fails to recognize that such need is already considered in the existing program sufficiently to meet the needs of entitled veterans.

It is estimated the first-year cost of this proposal would be $25.4 million, decreasing slightly to $25 million in fiscal year 1983.

Accordingly, for the aforementioned reasons, we oppose that proposal.

You have also asked for our views on a proposal to provide that a 100-percent service-connected disabled veteran who has suffered the loss or loss of use, or a combination of loss or loss of use, of both hands and one foot or both feet and one hand shall be compensated at the next higher rate or intermediate rate, not to exceed $1,388.

The rationale which I expressed earlier with respect to a two-tiered aid and attendance rate is largely applicable with respect to this proposal. The statutory rates provided under section 314 of title 38, United States Code, must be recognized as the considered product of congressional concern and, in the absence of evidence of disparity of those statutory rates as to this specific combination of disabilities, we oppose enactment of this proposal.

The cost would be less than $1 million per year.

Another proposal would provide that, in the case of a veteran who has suffered the service-connected loss or loss of use of one paired extremity, entitling the veteran to a rating of 40 percent or more, and who has also suffered the non-service-connected loss or loss of

use of the other paired extremity, shall be entitled to compensation based on a rating increased by the same amount that the rating would be increased by virtue of bilateral impairment if both disabilities were service connected. This is essentially the same as S. 379, and my comments stated earlier with regard to that proposal are equally applicable here.

The cost would be approximately $1 million per year.

As for the proposal to provide an increase in the additional monthly allowance for children payable to the surviving spouse receiving DIC in the amounts of $87 for one child and $55 for each additional child, our views are identical with those I stated in connection with the increase proposed for additional compensation for dependents of a service-connected veteran. We, accordingly, oppose this proposal.

We have not had the opportunity to estimate the cost of this proposal.

Still another proposal would increase the rate of special pension payable to recipients of the Congressional Medal of Honor, from $100 per month to $200 per month.

A monetary stipend has been paid to recipients of the Medal of Honor since 1916, although only Medal holders over age 65 were eligible at that time. The sole increase in the pension rate, from $10 to $100, occurred in 1961, and the pension is now payable regardless of age. The purpose of the special pension is to recognize valorous and heroic service, over and above any other compensation which might be payable on account of service with the Armed Forces. We consider this to be an appropriate time to again add to the amount of this pension, in light of the lengthy period which has elapsed since the previous increase and the general increase in the cost of living in the interim. We do not believe that an increment to the special pension would diminish the symbolic significance of the Medal of Honor. Accordingly, we favor enactment of this proposal.

As of December 1977, 269 persons were receiving the special pension. Estimated projected costs of the proposed bill for the next 5 fiscal years show the highest cost in 1980 at $315,600 and the cost in the fifth year at $297,600.

Finally, let me comment on the proposal to provide for a cost-of-living increase in the automobile assistance allowance for certain severely disabled service-connected veterans, from $3,300 to $4,100.

Under current law, the automobile allowance authorized under chapter 39 of title 38, United States Code, for all veterans with certain specified permanent service-connected losses or losses of use of hands, feet or vision is in the amount of $3,300. This amount was increased from $2,800 by Public Law 93–538, approved December 22, 1974.

While we generally favor adjustments in monetary benefits to accommodate changes in costs to which those benefits relate, we are not convinced that an increase in the automobile allowance from $3,300 to $4,100 is warranted and, accordingly, oppose this proposal.

Mr. Chairman, this completes my formal presentation. My associates and I will be pleased to answer any questions.

Changes in Existing Law Made by S. 2828 as Reported

In accordance with paragraph 4 of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as

reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 38—UNITED STATES CODE

* * * * * * *

PART I—GENERAL PROVISIONS

* * * * * * *

CHAPTER 1—GENERAL

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§ 109. Benefits for discharged members of allied forces

(a)(1) * * *

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(b)(*1*) Persons who served in the active service in the armed forces of any government allied with the United States in World War II and who at time of entrance into such active service were citizens of the United States shall, by virtue of such service, and if otherwise qualified, be entitled to the benefits of chapters 31 and 37 of this title in the same manner and to the same extent as veterans of World War II are entitled. No such benefit shall be extended to any person who is not a resident of the United States at the time of filing claim, or to any person who has applied for and received the same or any similar benefit from the government in whose armed forces he served.

(2)(A) Any person who (i) after August 31, 1939, and before December 8, 1941, entered into the active service of the armed forces of any government allied with the United States during World War II, (ii) was a citizen of the United States at the time of entrance into such active service, and (iii) suffered a service-connected disability or disabilities during such service and before January 1, 1947, shall be entitled to the benefits of chapter 11 of this title at the same rates, in the same manner and to the same extent as a veteran of the Armed Forces of the United States, except that any benefits payable monthly under such chapter shall be reduced by the amount of any benefits received monthly (or, if payable other than monthly, by the prorated monthly amount) from such government on account of such disability. No such benefits shall be paid under authority of this paragraph to any person who is not a citizen and resident of the United States.

(B)(i) The Administrator shall make an independent evaluation of any disability or disabilities compensable under subparagraph (A) of this paragraph.

(ii) In the case of any person receiving benefits from such government which are based on a determination by such government that such person has suffered a disability during active service in the armed forces of such government, such disability shall be conclusively presumed to be service connected for all purposes of subparagraph (A) of this paragraph.

(iii) Each person applying for or receiving benefits under subparagraph (A) of this section shall furnish (I) an authenticated certification from the allied government concerned attesting to the service of such person in the active service of the armed forces of such government and to the disability or disabilities suffered by such person in such service, and (II) such

other proofs as the Administrator shall require in addition thereto or (if such person is unable to obtain from such government such certification, in lieu thereof) including information concerning receipt of monetary benefits from such government.

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PART II—GENERAL BENEFITS

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CHAPTER 11—COMPENSATION FOR SERVICE-CONNECTED DISABILITY OR DEATH

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SUBCHAPTER VI—GENERAL COMPENSATION PROVISIONS

351. Benefits for persons disabled by treatment or vocational rehabilitation.
352. Persons heretofore having a compensable status.
353. Aggravation.
354. Consideration to be accorded time, place, and circumstances of service.
355. Authority for schedule for rating disabilities.
357. Combination of certain ratings.
358. Disappearance.
359. Protection of service connection.
360. Special consideration for certain cases of [blindness or bilateral kidney involvement or bilateral deafness.] *blindness, bilateral kidney involvement, bilateral deafness, or the loss or loss of use of paired extremities.*
361. Payment of disability compensation in disability severence cases.
362. Clothing allowance.

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Subchapter II—Wartime Disability Compensation

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§ 314. Rates of wartime disability compensation

For the purposes of section 310 of this title—

(a) if and while the disability is rated 10 per centum the monthly compensation shall be [$41] *$44*;

(b) if and while the disability is rated 20 per centum the monthly compensation shall be [$75] *$80*;

(c) if and while the disability is rated 30 per centum the monthly compensation shall be [$113] *$121*;

(d) if and while the disability is rated 40 per centum the monthly compensation shall be [$155] *$166*;

(e) if and while the disability is rated 50 per centum the monthly compensation shall be [$216] *$232*;

(f) if and while the disability is rated 60 per centum the monthly compensation shall be [$272] *$292*;

(g) if and while the disability is rated 70 per centum the monthly compensation shall be [$322] *$346*;

(h) if and while the disability is rated 80 per centum the monthly compensation shall be [$373] *$400*;

(i) if and while the disability is rated 90 per centum the monthly compensation shall be [$419] *$450*;

(j) if and while the disability is rated as total the monthly compensation shall be [$754] *$809*;

(k) if the veteran, as the result of service-connected disability, has suffered the anatomical loss or loss of use of one or more creative organs, or one foot, or one hand, or both buttocks, or blindness of one eye, having only light perception, or has suffered complete organic aphonia with constant inability to communicate by speech, or deafness of both ears, having absence of air and bone conduction, the rate of compensation therefor shall be $56 per month for each such loss or loss of use independent of any other compensation provided in subsections (a) through (j) or subsection (s) of this section but in no event to exceed [$937] *$1,005* per month; and in the event the veteran has suffered one or more of the disabilities heretofore specified in this subsection, in addition to the requirement for any of the rates specified in subsections (l) through (n) of this section, the rate of compensation shall be increased by $56 per month for each such loss or loss of use, but in no event to exceed [$1,312] *$1,408* per month;

(l) if the veteran, as the result of service-connected disability, has suffered the anatomical loss or loss of use of both hands, or both feet, or of one hand and one foot, or is blind in both eyes, with 5/200 visual acuity or less, or is permanently bedridden or so helpless as to be in need of regular aid and attendance, the monthly compensation shall be [$937] *$1,005*;

(m) if the veteran, as the result of service-connected disability has suffered the anatomical loss or loss of use of two extremities at a level, or with complications, preventing natural elbow or knee action with prosthesis in place, or has suffered blindness in both eyes having only light perception, or has suffered blindness in both eyes, rendering such veteran so helpless as to be in need of regular aid and attendance, the monthly compensation shall be [$1,032] *$1,107*;

(n) if the veteran, as the result of service-connected disability, has suffered the anatomical loss of two extremities so near the shoulder or hip as to prevent the use of a prosthetic appliance or has suffered the anatomical loss of both eyes, the monthly compensation shall be [$1,172] *$1,258*;

(o) if the veteran, as the result of service-connected disability, has suffered disability under conditions which would entitle such veteran to two or more of the rates provided in one or more subsections (l) through (n) of this section, no condition being considered twice in the determination, or if the veteran has suffered bilateral deafness (and the hearing impairment in either one or both ears is service connected) rated at 60 per centum or more disabling and the veteran has also suffered service-connected total blindness with 5/200 visual acuity or less, the monthly compensation shall be [$1,312] *$1,408*;

(p) in the event the veteran's service-connected disabilities exceed the requirements for any of the rates prescribed in this section, the Administrator may allow the next higher rate or an intermediate rate, but in no event in excess of [$1,312] *$1,408*. In the event the veteran has suffered service-connected blindness, with 5/200 visual acuity or less and (1) has also suffered bilateral deafness (and the hearing impairment in either one or both ears is service connected) rated at no less than 40 per centum disabling,

the Administrator shall allow the next higher rate, or (2) has also suffered service-connected total deafness in one ear, the Administrator shall allow the next intermediate rate, but in no event in excess of [$1,312] *$1,408. In the event the veteran has suffered the anatomical loss or loss of use, or a combination of anatomical loss and loss of use, of three extremities, the Administrator shall allow the next higher rate or intermediate rate, but in no event in excess of $1,408;*

[(q) This subsection was repealed by section 4(a), Public Law 90–493.]

(r) [If] *Subject to the limitations of section 3203(e) of this title, if* any veteran, otherwise entitled to the compensation authorized under subsection (o), or the maximum rate authorized under subsection (p), is in need of *(1)* regular aid and attendance, such veteran shall be paid, in addition to such compensation, a monthly aid and attendance allowance at the rate of [$563] *$604* per month, [subject to the limitations of section 3203(e) of this title] *or (2) special aid and attendance, such veteran shall be paid, in addition to such compensation, an allowance of $900 per month, if the Administrator finds that such veteran, in the absence of such aid and attendance by another person, would require hospitalization, nursing home care, or other residential institutional care.* For the purposes of section 334 of this title, such allowance shall be considered as additional compensation payable for disability;

(s) If the veteran has a service-connected disability rated as total, and (1) has additional service-connected disability or disabilities independently ratable at 60 per centum or more, or, (2) by reason of such veteran's service-connected disability or disabilities, is permanently housebound, then the monthly compensation shall be [$843] *$905*. For the purposes of this subsection, the requirement of "permanently housebound" will be considered to have been met when the veteran is substantially confined to such veteran's house (ward or clinical areas, if institutionalized) or immediate premises due to a service-connected disability or disabilities which it is reasonably certain will remain throughout such veteran's lifetime.

§ 315. Additional compensation for dependents

Any veteran entitled to compensation at the rates provided in section 314 of this title, and whose disability is rated not less than 50 per centum, shall be entitled to additional compensation for dependents in the following monthly amounts:

(1) If and while rated totally disabled and—

[(A) has a spouse but no child living, $46;

[(B) has a spouse and one child living, $77;]

(A) has a spouse, $87, plus $55 for each child, if any;

(B) has no spouse, $87 for the first child, plus $55 for each additional child, if any;

[(C) has a spouse and two children living, $98;

[(D) has a spouse and three or more children living, $120 (plus $22 for each living child in excess of three);

[(E) has no spouse but one child living, $30;

[(F) has no spouse but two children living, $52;

[(G) has no spouse but three or more children living, $77 (plus $22 for each living child in excess of three);]

[(H)] (*C*) has a parent dependent upon such veteran for support, then, in addition to the above amounts, [$37] *$40* for each parent so dependent;

[(I)] (*D*) notwithstanding the other provisions of this subsection, the monthly payable amount on account of a spouse who is (1) a patient in a nursing home or (2) helpless or blind, or so nearly helpless or blind as to need or require the regular aid and attendance of another person, shall be [$83] *$89* for a totally disabled veteran and proportionate amounts for partially disabled veterans in accordance with paragraph (2) of this subsection; and

[(J)] (*E*) notwithstanding the other provisions of this subsection, the monthly payable amount on account of each child who has attained the age of eighteen years and who is pursuing a course of instruction at an approved educational institution shall be [$70] *$75* for a totally disabled veteran and proportionate amounts for partially disabled veterans in accordance with paragraph (2) of this subsection.

(2) If and while rated partially disabled, but not less than 50 per centum, in an amount having the same ratio to the amount specified in paragraph (1) as the degree of disability bears to total disability. The amounts payable under this paragraph shall be adjusted upward or downward to the nearest dollar, counting fifty cents and over as a whole dollar.

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Subchapter VI—General Compensation Provisions

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§ 360. Special consideration for certain cases of [blindness or bilateral kidney involvement or bilateral deafness] *blindness, bilateral kidney involvement, bilateral deafness, or loss or the loss of use of paired extremities*

(*a*) Where any veteran has suffered (1) blindness in one eye as a result of service-connected disability and has suffered blindness in the other eye as a result of non-service-connected disability not the result of such veteran's own willful misconduct, or (2) has suffered the loss or loss of use of one kidney as a result of service-connected disability, and has suffered severe involvement of the other kidney such as to cause total disability, as a result of non-service-connected disability not the result of such veteran's own willful misconduct, or (3) has suffered total deafness in one ear as a result of service-connected disability and has suffered total deafness in the other ear as the result of non-service-connected disability not the result of such veteran's own willful misconduct, the Administrator shall assign and pay to the veteran concerned the applicable rate of compensation under this chapter as if such veteran's blindness in both eyes or such bilateral kidney involvement or such total deafness in both ears were the result of service-connected disability.

(*b*) *Where any veteran has suffered the loss or loss of use of an extremity as a result of service-connected disability so as to entitle such veteran to a rating of not less than 40 per centum and has suffered the loss or loss of use*

of the paired extremity as a result of non-service-connected disability, not the result of the veteran's own willful misconduct, which would, if service-connected, entitle such veteran to a rating of not less than 40 per centum, the Administrator shall determine the percentage increase, if any, which would be added to the combined value of such disabilities if both were service-connected and independently rated, and shall, in the same manner in which the Administrator would add such percentage to the combined value of less than total service-connected disabilities, add such percentage to the rating of such veteran's service-connected disability.

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§ 362. Clothing allowance

The Administrator under regulations which the Administrator shall prescribe, shall pay a clothing allowance of [$203] *$218* per year to each veteran who because of disability which is compensable under the provisions of this chapter, wears or uses a prosthetic or orthopedic appliance or appliances (including a wheelchair) which the Administrator determines tends to wear out or tear the clothing of such a veteran.

CHAPTER 13—DEPENDENCY AND INDEMNITY COMPENSATION FOR SERVICE-CONNECTED DEATHS

SUBCHAPTER I—GENERAL

Sec.
401. Definitions.
402. Determination of pay grade.
403. Coverage of members of Reserve Officers' Training Corps.
404. Special provisions relating to surviving spouses.
405. Special determinations.

SUBCHAPTER II—DEPENDENCY AND INDEMNITY COMPENSATION

410. Death entitling survivors to dependency and indemnity compensation.
411. Dependency and indemnity compensation to a surviving spouse.
411A. Benefits for surviving spouses of certain totally disabled veterans.
412. Benefits in certain cases of in-service or service-connected deaths.
413. Dependency and indemnity compensation to children.
414. Supplemental dependency and indemnity compensation to children.
414A. Benefits for children of certain totally disabled veterans.
415. Dependency and indemnity compensation to parents.
416. Dependency and indemnity compensation in cases of prior deaths.
417. Restriction on payments under this chapter.

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Subchapter I—General

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§ 404. Special provisions relating to surviving spouses

No dependency and indemnity compensation shall be paid to the surviving spouse of a veteran dying after December 31, 1956, unless such surviving spouse was married to such veteran—

(1) before the expiration of fifteen years after the termination of the period of service in which the injury or disease causing the death of the veteran was incurred or aggravated; or

(2) for one year or more; or

(3) for any period of time if a child was born of the marriage, or was born to them before the marriage.

§ 405. *Special determinations*

(a) In any case under this chapter in which the Administrator is required to determine a number of months, the calendar month in which (1) a veteran is rated totally disabled, (2) a veteran died, and (3) a child will attain age 21, shall be considered as one full month.

(b) In any case under this chapter where a monthly rate would contain a fraction of a dollar, such rate shall be fixed at the next higher dollar.

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Subchapter II—Dependency and Indemnity Compensation

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§ 411. Dependency and indemnity compensation to a surviving spouse

(a) Dependency and indemnity compensation shall be paid to a surviving spouse, based on the pay grade of the person upon whose death entitlement is predicated, at monthly rates set forth in the following table:

Pay grade	Monthly rate	Pay grade	Monthly rate
E–1	$277	W–4	$397
E–2	286	O–1	350
E–3	293	O–2	362
E–4	311	O–3	388
E–5	320	O–4	409
E–6	327	O–5	451
E–7	343	O–6	507
E–8	362	O–7	550
E–9	[1] 378	O–8	602
W–1	350	O–9	647
W–2	364	O–10	[2] 708
W–3	375		

Pay grade	*Monthly rate*	*Pay grade*	*Monthly rate*
E–1	*$297*	*W–4*	*$426*
E–2	*307*	*O–1*	*376*
E–3	*314*	*O–2*	*388*
E–4	*334*	*O–3*	*416*
E–5	*343*	*O–4*	*439*
E–6	*351*	*O–5*	*484*
E–7	*368*	*O–6*	*544*
E–8	*388*	*O–7*	*590*
E–9	[1] *406*	*O–8*	*646*
W–1	*376*	*O–9*	*694*
W–2	*391*	*O–10*	[2] *760*
W–3	*402*		

[1] If the veteran served as sergeant major of the Army, senior enlisted advisor of the Navy, chief master sergeant of the Air Force, sergeant major of the Marine Corps, or master chief petty officer of the Coast Guard, at the applicable time designated by sec. 402 of this title, the surviving spouse's rate shall be [$407.] *$437.*

[2] If the veteran served as Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, or Commandant of the Marine Corps, at the applicable time designated by sec. 402 of this title, the surviving spouse's rate shall be [$759.] *$814.*

(b) If there is a surviving spouse with one or more children (*of a deceased veteran*) below the age of eighteen [of a deceased veteran], the dependency and indemnity compensation paid monthly to the surviving spouse shall be increased by [$33 for each such child.] *$87 for the first such child, plus $55 for each additional such child.*

(c) The monthly rate of dependency and indemnity compensation payable to a surviving spouse shall be increased by [$83] *$89* if the spouse is (1) a patient in a nursing home or (2) helpless or blind, or so nearly helpless or blind as to need or require the regular aid and attendance of another person.

(d) The monthly rate of dependency and indemnity compensation payable to a surviving spouse shall be increased by $45 if the spouse is so disabled as to be permanently housebound but does not qualify for the aid and attendance allowance under subsection (c) of this section. For purposes of this subsection, the requirement of "permanently housebound" shall be met when the surviving spouse is substantially confined to such surviving spouse's house (ward or clinical areas, if institutionalized) or immediate premises by reason of a disability or disabilities reasonably certain to remain throughout such surviving spouse's lifetime.

§ 411A. Benefits for surviving spouses of certain totally disabled veterans

(a) Whenever any veteran dies, not as the result of the willful misconduct of such veteran or such veteran's spouse, and (1) at the time of death such veteran had a service-connected disability or disabilities rated as total without regard to any increase in the rating resulting from a determination in an individual case that such veteran was unemployable, and (2) the Administrator has not determined that such veteran's death resulted from a service-connected or compensable disability, benefits shall be paid to the surviving spouse as provided in subsection (b) of this section.

(b)(1) In any case in which the service-connected disability or disabilities of such veteran had been so rated as total continuously for a period of twenty years or longer immediately prior to such veteran's death or had been so rated continuously during the period from the date of such veteran's discharge to the date of such veteran's death and such period was ten years or longer, benefits shall be paid to the surviving spouse of such veteran at the appropriate monthly rate provided for under section 411 or 412 of this title in the same manner and to the same extent as if the Administrator had determined that such veteran's death had resulted from a service-connected or compensable disability.

(2) In any case in which the service-connected disability or disabilities of such veteran had been so rated as total continuously for a period not meeting the requirements of paragraph (1) of this subsection, benefits shall be paid to the surviving spouse of such veteran at the appropriate monthly rate provided for in section 411 or 412 of this title, in the same manner and to the same extent as if the Administrator had determined that the veteran's death resulted from a service-connected or compensable disability, except that—

(A) the period for which such benefits shall be paid shall not exceed a number of months equal to the number of months the disability of such veteran was continuously so rated, or

(B) the monthly rate of benefits shall be determined by multiplying the monthly rate which would otherwise be applicable under such

section 411 or 412 (had the Administrator found that such veteran's death resulted from a service-connected or compensable disability) by the number derived by dividing (i) the number of months such veteran was continuously so rated by (ii) the number of months of remaining life expectancy (using standard mortality tables) of the surviving spouse at the time of such veteran's death,

whichever method of determining benefits the surviving spouse elects. An election to receive benefits under clause (A) or (B) of the first sentence of this paragraph shall be irrevocable if any benefits are paid pursuant to such an election. In no event shall the benefits payable under this paragraph exceed those which would be payable under such section 411 or 412 if the Administrator had determined that the veteran had died from a service-connected or compensable disability.

(c) Surviving spouses receiving benefits under this section shall be entitled to all payments and the benefit of all other provisions of law under this title and other law, except benefits under sections 411 and 412 of this title, to which surviving spouses receiving dependency and indemnity compensation are entitled.

§ 412. Benefits in certain cases of in-service or service-connected deaths

(a) * * *

* * * * * * *

(b) [In] *Except in cases in which the surviving spouse is receiving benefits under section 411A(b)(2)(B) of this title, in* any case where the amount of dependency and indemnity compensation payable under this chapter to a surviving spouse who has children is less than the amount of pension which would be payable to (1) such surviving spouse, or (2) such children if the surviving spouse were not entitled, under chapter 15 of this title had the death occurred under circumstances authorizing payment of death pension, the Administrator shall pay dependency and indemnity compensation to such surviving spouse in an amount equal to such amount of pension.

§ 413. Dependency and indemnity compensation to children

Whenever there is no surviving spouse of a deceased veteran entitled to dependency and indemnity compensation, dependency and indemnity compensation shall be paid in equal shares to the children of the deceased veteran at the following monthly rates:

(1) one child, [$140] *$150*;
(2) two children, [$201] *$216*;
(3) three children, [$259] *$278*, and
(4) more than three children, [$259] *$278*; plus [$52] *$56* for each child in excess of three.

§ 414. Supplemental dependency and indemnity compensation to children

(a) In the case of a child entitled to dependency and indemnity compensation who has attained the age of eighteen and who, while under such age, became permanently incapable of self-support, the dependency and indemnity compensation paid monthly to such child shall be increased by [$83] *$89*.

(b) If dependency and indemnity compensation is payable monthly to a person as a "surviving spouse" and there is a child (of such person's deceased spouse) who has attained the age of eighteen and who, while under such age, became permanently incapable of self-support, dependency and indemnity compensation shall be paid monthly to each such child, concurrently with the payment of dependency and indemnity compensation to the surviving spouse, in the amount of [$140] *$150.*

(c) If dependency and indemnity compenstion is payable monthly to a person as a "surviving spouse" and there is a child (of such person's deceased spouse) who has attained the age of eighteen and who, while under the age of twenty-three, is pursuing a course of instruction at an educational institution approved under section 104 of this title, dependency and indemnity compensation shall be paid monthly to each such child, concurrently with the payment of dependency and indemnity compensation to the surviving spouse, in the amount of [$71] *$76.*

§ 414A. Benefits for surviving children of certain totally disabled veterans

(a) Whenever any veteran dies and (1) there is no surviving spouse, (2) at the time of death such veteran had a service-connected disability or disabilities rated as total without regard to any increase in the rating resulting from a determination in an individual case that such veteran was unemployable, and (3) the Administrator has not determined that such veteran's death resulted from a service-connected or compensable disability, benefits shall be paid to the surviving dchildren (in equal shares as provided in subsection (b) or (c) of this section, as appropriate, except that no benefits under this section shall be paid to any child if the veteran's death resulted from the willful misconduct of such child or the veteran.

(b)(1) In any case in which the service-connected disability or disabilities of such veteran had been so rated as total continuously for a period of twenty years or longer immediately prior to such veteran's death or had been so rated continuously during the period from the date of such veteran's discharge to the date of such veteran's death and such period was ten years or longer, benefits shall be paid to the surviving children of such veteran at the appropriate rate provided for under sections 413 and 414 of this title in the same manner and to the same extent as if the Administrator had determined that such veteran's death had resulted from a service-connected or compensable disability.

(2) In any case in which the service-connected disability or disabilities of such veteran had been so rated as total continuously for a period not meeting the requirements of paragraph (1) of this subsection, benefits shall be paid to the surviving child of such veteran in the same manner and to the same extent as if the Administrator had determined that the veteran's death resulted from a service-connected or compensable disability, except that the monthly amount payable to such child shall be determined by multiplying the monthly rate of dependency and indemnity compensation which would otherwise be payable under sections 413 and 414 of this title (had the Administrator found that such veteran's death resulted from a service-connected or compensable disability) by the number derived by dividing (A) the number of months such veteran was continuously so rated by (B) the number of months remaining from the date of the veteran's death until

the child attains twenty-one years of age; but in no event shall the benefits payable under this paragraph exceed those which would be payable under sections 413 and 414 of this title if the Administrator had determined that the veteran had died from a service-connected or compensable disability.

(c) In the case of any child of a deceased veteran described in subsection (a) of this section who became permanently incapable of self-support before attaining the age of eighteen, benefits shall be paid to or on behalf of such child at the rate provided under section 413 and, if applicable, section 414 of this title.

(d) Surviving children receiving benefits under this section shall be entitled to all payments and the benefit of all other provisions of law under this title and other law, except benefits under sections 413 and 414 of this title, to which surviving children receiving dependency and indemnity compensation are entitled.

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CHAPTER 15—PENSION FOR NON-SERVICE-CONNECTED DISABILITY OR DEATH OR FOR SERVICE

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Subchapter IV—Army, Navy, Air Force, and Coast Guard Medal of Honor Roll

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§ 562. Special provisions relating to pension

(a) The Administrator shall pay monthly to each person whose name has been entered on the Army, Navy, Air Force, and Coast Guard Medal of Honor Roll, and a copy of whose certificate has been delivered to the Administrator under subsection (c) of section 561 of this title, a special pension at the rate of [$100] *$200*, beginning as of the date of application therefor under section 560 of this title.

(b) The receipt of special pension shall not deprive any person of any other pension or other benefit, right, or privilege to which such person is or may hereafter be entitled under any existing or subsequent law. Special pension shall be paid in addition to all other payments under laws of the United States.

(c) Special pension shall not be subject to any attachment, execution, levy, tax lien, or detention under any process whatever.

(d) If any person has been awarded more than one medal of honor, such person shall not receive more than one special pension.

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CHAPTER 23—BURIAL BENEFITS

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§ 906. Headstones and markers

(a) The Administrator shall furnish, when requested, appropriate Government headstones or markers at the expense of the United States for the unmarked graves of the following:

(1) Any individual buried in a national cemetery or in a post cemetery.

(2) Any individual eligible for burial in a national cemetery (but not buried there), except for those persons or classes of persons enumerated in section 1002 (4), (5), and (6) of this title.

(3) Soldiers of the Union and Confederate Armies of the Civil War.

(b) The Administrator shall furnish, when requested, an appropriate memorial headstone or marker to commemorate any veteran [dying in the service, and] whose remains have not been recovered or identified or were buried at sea, for placement by the applicant in a national cemetery area reserved for such purposes under the provisions of section 1003 of this title, or in any private or local cemetery.

§ 907. Deaths from service-connected disability

In any case in which a veteran dies as the result of a service-connected disability or disabilities, the Administrator, upon the request of the survivors of such veteran, shall pay the burial and funeral expenses incurred in connection with the death of the veteran in an amount not exceeding *(1) $1,500, or (2)* the amount authorized to be paid under section 8134(a) of title 5 in the case of a Federal employee whose death occurs as the result of an injury sustained in the performance of duty. Funeral and burial benefits provided under this section shall be in lieu of any benefits authorized under sections 902 and 903 (a)(1) and (b) of this title, *whichever is the greater.*

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PART III—READJUSTMENT AND RELATED BENEFITS

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CHAPTER 39—AUTOMOBILES AND ADAPTIVE EQUIPMENT FOR CERTAIN DISABLED VETERANS AND MEMBERS OF THE ARMED FORCES

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§ 1902. Assistance for providing automobile and adaptive equipment

(a) The Administrator, under regulations which he shall prescribe, shall provide or assist in providing an automobile or other conveyance to each eligible person by paying the total purchase price of the automobile or other conveyance (including all State, local, and other taxes) or [$3,300] *$4,100,* whichever is the lesser, to the seller from whom the eligible person is purchasing under a sales agreement between the seller and the eligible person.

(b) The Administrator, under regulations which he shall prescribe, shall provide each eligible person the adaptive equipment deemed necessary to insure that the eligible person will be able to operate the automobile or other conveyance in a manner consistent with his own safety and the safety of others and so as to satisfy the applicable standards of licensure established by the State of his residency or other proper licensing authority.

(c) In accordance with regulations which he shall prescribe, the Administrator shall (1) repair, replace or reinstall adaptive equipment deemed necessary for the operation of an automobile or other

conveyance acquired in accordance with the provisions of this chapter, and (2) provide, repair, replace, or reinstall such adaptive equipment for any automobile or other conveyance which an eligible person may previously or subsequently have acquired.

(d) If an eligible person cannot qualify to operate an automobile or other conveyance, the Administrator shall provide or assist in providing an automobile or other conveyance to such person, as provided in subsection (a) of this section, if the automobile or other conveyance is to be operated for the eligible person by another person.

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TITLE 36.—PATRIOTIC SOCIETIES AND OBSERVANCES

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Chapter 8.—AMERICAN BATTLE MONUMENTS COMMISSION

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§ 121. American Battle Monuments Commission; appointment; secretary; terms of office; vacancies; expenses; designation of Armed Forces personnel to assist.

Upon the request of the Commission, the heads of the Federal departments or agencies are authorized to designate such personnel, and to make available to the Commission such facilities, of their respective departments or agencies, or of the Army, Navy, Air Force, or Marine Corps, as the case may be, as may be necessary to assist in carrying out the purposes of sections 121, 122b, 123 to 125, 127, 128, 131, 132, and 138 to 138b of this title, and may expend for such purposes any funds appropriated to such departments, agencies, and services, with reimbursement from the Commission for the pay and allowances of the personnel so designated. The Commission is authorized to employ such further personnel as may be necessary to carry out the purposes of such sections, within the limits of any appropriation or appropriations made for such purposes. *Personnel employed as cemetery superintendents and assistant superintendents by the Commission shall be citizens of the United States.*

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Calendar No. 978

95TH CONGRESS, 2d Session | SENATE | REPORT No. 95-1055

VETERANS' HOUSING BENEFITS IMPROVEMENT ACT OF 1978

JULY 31 (legislative day, MAY 17), 1978.—Ordered to be printed

Mr. CRANSTON, from the Committee on Veterans' Affairs, submitted the following

REPORT

[To accompany H.R. 12028]

The Committee on Veterans' Affairs, to which was referred the bill (H.R. 12028) to amend title 38, United States Code, to improve the housing programs of the Veterans' Administration, having considered the same, reports favorably thereon with an amendment in the nature of a committee substitute, and an amendment to the title, and recommends that the bill, as amended, do pass.

COMMITTEE AMENDMENTS

The amendments are as follows:

Strike out all after the enacting clause as follows:

[That this Act may be cited as the "Veterans' Housing Improvements Act of 1978".

[SEC. 2. Section 802 of title 38, United States Code, relating to limitations on assistance furnished for specially adapted housing for certain disabled veterans, is amended by striking out "$25,000" and inserting in lieu thereof "$30,000".

[SEC. 3. Section 1802(a) of title 38, United States Code, relating to basic entitlement for home, condominium, and mobile home loans, is amended—

[(1) in the first sentence, by striking out "World War II or the Korean conflict" both places it appears and inserting in lieu thereof "World War II, the Korean conflict, or the Vietnam era"; and

[(2) in the second sentence, by striking out "Entitlement" and all that follows through "World War II, has" and inserting in lieu thereof "In the case of any veteran who served on active duty in two or more periods specified in the preceding sentence, or in section 1818 of this title, for which eligibility for the benefits under this chapter may be granted, entitlement derived from service during the most recent such period (1) shall cancel any unused entitlement derived from service during any earlier such period, and (2) shall be reduced by the amount by which entitlement from service during any earlier such period has".

[SEC. 4. Section 1803(a)(1) of title 38, United States Code, relating to the basic Veterans' Administration loan guaranty, is amended by striking out "World War II or Korean conflict veteran" and inserting in lieu thereof "veteran eligible for benefits under this chapter".

[SEC. 5. (a) Section 1810(c) of title 38, United States Code, relating to the amount of the Veterans' Administration guaranty of loans to veterans for purchase or construction of homes, is amended by striking out "$17,500" and inserting in lieu thereof "$25,000".

[(b) Section 1811(d)(2)(A) of such title, relating to the amount of direct loans by the Veterans' Administration to veterans for purchase or construction of homes, is amended by striking out "$17,500" both places it appears and inserting in lieu thereof "$25,000".

[SEC. 6. (a) Section 1818 of title 38, United States Code, relating to eligibility for home loans of veterans who serve after January 31, 1955, is amended—

[(1) by inserting "and prior to August 5, 1964, or after May 7, 1975," in subsection (a) after "January 31, 1955,";

[(2) by striking out "active duty after such date" in subsection (a)(3) and inserting in lieu thereof "such active duty";

[(3) by inserting "and section 1802(a) of this title" in subsection (a) after "of this section";

[(4) by striking out subsection (b) and redesignating subsection (c) as subsection (b); and

[(5) by striking out **"Veterans who serve after January 31, 1955"** in the catchline and inserting in lieu thereof **"Service after January 31, 1955, and prior to August 5, 1964, or after May 7, 1975".**

[(b) The item relating to section 1818 in the table of sections at the beginning of chapter 37 of title 38, United States Code, is amended to read as follows:

"1818. Service after January 31, 1955, and prior to August 5, 1964, or after May 7, 1975.".

[SEC. 7. (a) Subsections (a) and (b) of section 1819 of title 38, United States Code, relating to mobile home and mobile home lot loans, are amended to read as follows:

["(a)(1) Notwithstanding any other provision of this chapter, any loan to a veteran eligible for the benefits of this chapter, if made pursuant to the provisions of this section, may be guaranteed if such loan is for one of the following purposes:

["(A) The purchase of a lot on which to place a mobile home already owned by the veteran.

["(B) The purchase of a new or used single-wide mobile home.

["(C) The purchase of a new or used single-wide mobile home and a lot on which to place such home.

["(D) The purchase of a new or used double-wide mobile home.

["(E) The purchase of a new or used double-wide mobile home and a lot on which to place such home.

["(2) A loan for any of the purposes described in paragraph (1) of this subsection may include an amount determined by the Administrator to be appropriate to cover the cost of necessary preparation of a lot already owned or to be acquired by the veteran, including the installation of utility connections, sanitary facilities, and paving and the construction of a suitable pad.

["(3) Any loan made for the purposes set forth in subparagraph (C) or (E) of paragraph (1) shall be considered as part of one loan. The transaction may be evidenced by a single loan instrument or separate loan instruments for (A) that portion of the loan which finances the purchase of the mobile home, and (B) the portion which finances the purchase of the lot, plus necessary preparation of such lot.

["(b)(1) Use of entitlement under this section for the purchase of a mobile home unit shall preclude the use of remaining entitlement for the purchase of an additional mobile home unit until the unit which secured the loan has been disposed of by the veteran or has been destroyed by fire or other natural hazard.

["(2) The Administrator shall restore entitlement to all loan guaranty benefits under this chapter for the veteran when the conditions prescribed in section 1802(b) of this title have been met.".

[(b)(1) Paragraph (1) of subsection (c) of such section is amended to read as follows:

["(1) Loans for any of the purposes authorized by subsection (a) of this section shall be submitted to the Administrator for approval prior to loan closing

except that the Administrator may exempt any lender of a class listed in section 1802(d) of this title from compliance with such prior approval requirement if the Administrator determines that the experience of such lender or class of lenders in mobile home financing warrants such exemption.".

[(2) Paragraph (3) of such subsection is amended by striking out the first sentence and inserting in lieu thereof the following: "The Administrator's guaranty shall not exceed the lesser of 50 per centum of the loan amount or the maximum loan guaranty entitlement available, not to exceed $17,500. Payment of a claim under such guaranty shall be made only after liquidation of the security for the loan and the filing of an accounting with the Administrator.".

[(3) Such subsection is further amended by adding at the end thereof the following new paragraph:

["(4) The amount of guaranty entitlement available to a veteran under this section shall not be more than $17,500 less such entitlement as may have been used under this section. Use of entitlement under section 1810 or 1811 shall reduce entitlement available for use under this section to the same extent that entitlement available under section 1810 is reduced to less than $17,500.".

[(c) Subsection (d) of such section is amended to read as follows:

["(d)(1) The maturity of any loan guaranteed under this section shall not be more than—

["(A) fifteen years and thirty-two days in the case of a loan for the purchase of a lot only;

["(B) fifteen years and thirty-two days in the case of a loan for the purchase of a single-wide mobile home only;

["(C) fifteen years and thirty-two days in the case of a loan for the purchase of a single-wide mobile home and a lot;

["(D) twenty years and thirty-two days in the case of a loan for the purchase of a double-wide mobile home only; or

["(E) twenty years and thirty-two days in the case of a loan for the purchase of a double-wide mobile home and a lot.

["(2) Nothing in paragraph (1) shall preclude the Administrator, under regulations which the Administrator shall prescribe, from consenting to necessary advances for the protection of the security or the holder's lien, or to a reasonable extension of the term or reamortization of such loan.".

[(d) Paragraph (4) of subsection (e) of such section is amended to read as follows:

["(4) the amount of the loan to be paid by the veteran is not in excess of the amount determined to be reasonable, based upon—

["(A) with respect to the portion of the loan to purchase a new mobile home, such cost factors as the Administrator considers proper to take into account;

["(B) with respect to the portion of the loan to purchase a used mobile home, the reasonable value of the property, as determined by the Administrator;

["(C) with respect to the portion of the loan to purchase a lot, the reasonable value of such lot as determined by the Administrator; and

["(D) with respect to the portion of the loan to cover the cost of necessary site preparation, an appropriate amount as determined by the Administrator;".

[(e) Such section is further amended by striking out subsection (g) and by redesignating subsections (h), (i), (j), (k), (l), (m), and (n) as subsections (g), (h), (i), (j), (k), (l), and (m), respectively.

[(f) Subsection (h) of such section (as redesignated by subsection (e)) is amended by striking out the third sentence thereof.

[(g) Subsection (i) of such section (as redesignated by subsection (e)) is amended by striking out "subsection (i)" and inserting in lieu thereof "subsection (h)".

[(h) Subsection (j) of such section (as redesignated by subsection (e)) is amended to read as follows:

[(f) Subsection (h) of such section (as redisignated by subsection (e)) is may deny guaranteed or direct loan financing of any mobile homes constructed by a manufacturer which fails or is unable to discharge its obligations under the warranty required by subsection (i) of this section; or in the case of mobile homes which are determined by the Administrator not to conform to the standards prescribed pursuant to subsection (h) of this section.".

[(i) Subsection (l) of such section (as redesignated by subsection (e)) is amended to read as follows:

[“(1) The Administrator's annual report to Congress shall include a report on operations under this section (including experience with compliance with the warranty required by subsection (i) of this section and experience regarding defaults and foreclosures) and a report on the results of mobile home plant inspections conducted by the Department of Housing and Urban Development.”.

[SEC. 8. Section 1811(d)(2)(B) of title 38, United States Code, is amended to read as follows:

[“(B) The original principal amount of any loan made under this section for the purposes described in section 1819 of this title shall not exceed an amount which bears the same ratio to $33,000 as the amount of guaranty to which the veteran is entitled, under section 1819 of this title, at the time the loan is made bears to $17,500. The guaranty entitlement of any veteran who is granted a loan under this section, or who before the date of the enactment of the Veterans' Housing Improvements Act of 1978 was granted a loan under this section, shall be charged with an amount which bears the same ratio to $17,500 as the amount of the loan bears to $33,000.”.

[SEC. 9. The amendments made by this Act shall take effect October 1, 1978.]

and insert in lieu thereof the following:

That this Act may be cited as the “Veterans' Housing Benefits Improvement Act of 1978”.

SEC. 2. Section 802 of title 38, United States Code, is amended by striking out “$25,000” and inserting in lieu thereof “$30,000”.

SEC. 3. Section 1802 of title 38, United States Code, is amended by—

(1) amending subsection (a) by—

(A) striking out in the first sentence “World War II or the Korean conflict” both places it appears and inserting in lieu thereof “World War II, the Korean conflict, or the Vietnam era”; and

(B) striking out in the second sentence “Entitlement” and all that follows through “World War II, has” and inserting in lieu thereof “In the case of any veteran who served on active duty in two or more periods specified in the preceding sentence, or in section 1818 of this title, for which eligibility for the benefits under this chapter may be granted, entitlement derived from service during the most recent such period (1) shall cancel any unused entitlement derived from service during any earlier such period, and (2) shall be reduced by the amount by which entitlement from service during any earlier such period has”; and

(2) amending subsection (b) by—

(A) inserting “(A)” after “(1)”;

(B) striking out “and” after the semicolon in subclause (A) of clause (1) (as redesignated by subclause (A) of this clause) and inserting in lieu thereof “or”;

(C) striking out “(2)” at the beginning of clause (2) and inserting in lieu thereof “(B)”;

(D) redesignating clause (3) as clause (2); and

(E) striking out in the material following clause (2) (as redesignated by subclause (D) of this clause) “clauses (1) and (2)” and inserting in lieu thereof “clause (1)”.

SEC. 4. Section 1803 of title 38, United States Code, is amended by—

(1) striking out in subsection (a)(1) “World War II or Korean conflict veteran,” and inserting in lieu thereof “veteran eligible for benefits under this chapter,”;

(2) amending subsection (c)(1) by—

(A) inserting “(A)” before “Loans”;

(B) inserting a comma and “except as provided in subparagraph (B) of this paragraph,” after “chapter, and” in subparagraph (A) (as redesignated by subclause (A) of this clause) of such subsection (c)(1); and

(C) inserting at the end thereof the following new subparagraph:

“(B) Loans guaranteed or insured under this chapter for the purposes of energy-related improvements, as described in section 1810(a)(7) of this title, may bear interest at a rate higher than that specified by the Administrator pursuant to subparagraph (A) of this paragraph, but not in excess of such rate as the Administrator may from time to time find the loan market demands for

loans for such purposes, except that in establishing the rate of interest that shall be applicable to such loans, the Administrator shall consult with the Secretary of Housing and Urban Development so that, to the maximum extent possible, a coordinated national policy on interest rates on federally guaranteed or insured loans for such energy-related improvements may be carried out.".

SEC. 5. Section 1810 of title 38, United States Code, is amended by—

(B) inserting below clause (6) and above the last sentence of such subsection the following new clause:

"(6) To purchase a one-family residential unit in a condominium housing development or project, provided such development or project is approved by the Administrator under criteria which the Administrator shall prescribe in regulations."; and

"(7) To improve a dwelling or farm residence which is to be or is owned and occupied by the veteran as the veteran's home by either installation of solar heating, solar heating and cooling, or combined solar heating and cooling, or application of a residential energy conservation measure. As used in this clause, the terms 'solar heating,' 'solar heating and cooling,' and 'combined solar heating and cooling' shall be defined as defined in clauses (1) and (2) of section 3 of the Solar Heating and Cooling Demonstration Act of 1974 (42 U.S.C. 5502) and shall, in addition, include a passive system based on conductive, convective, or radiant energy transfer; the term 'passive system' includes, but is not limited to, window and skylight glazing, thermal floors, walls and roofs, movable insulation panels (in conjunction with glazing), portions of a residential structure which serve as solar furnaces so as to add heat to residences, double pane window insulation, or other components designed to enhance the natural transfer of energy for the purpose of heating or heating and cooling a residence as determined by the Administrator; and the term 'residential energy conservation measure' means—

"(A) caulking and weatherstripping of all exterior doors and windows;

"(B) furnace efficiency modifications limited to—

"(i) replacement burners, boilers, or furnaces designed to reduce the firing rate or to achieve a reduction in the amount of fuel consumed as a result of increased combustion efficiency.

"(ii) devices for modifying flue openings which will increase the efficiency of the heating system, and

"(iii) electrical or mechanical furnace ignition systems which replace standing gas pilot lights;

"(C) clock thermostats;

"(D) ceiling, attic, wall, and floor insulation;

"(E) water heater insulation;

"(F) storm windows and doors;

"(G) heat pumps; and

"(H) such other measures as the Administrator may by regulation identify for purposes of this clause."; and

(A) amending clause (6) to read as follows:

"(6) To purchase a one-family residential unit in a condominium housing development or project, provided such development or project is approved by the Administrator under criteria which the Administrator shall prescribe in regulations."; and

(2) striking out in subsection (c) "$17,500" and inserting in lieu thereof "$25,000".

SEC. 6. Section 1811(d)(2) of title 38, United States Code, is amended by—

(1) striking out in subparagraph (A) "$17,500" both places it appears and inserting in lieu thereof "$25,000"; and

(2) amending subparagraph (B) to read as follows:

"(B) The original principal amount of any loan made under this section for the purposes described in section 1819 of this title shall not exceed an amount which bears the same ratio to $33,000 as the amount of guaranty to which the veteran is entitled, under section 1819 of this title, at the time the loan is made bears to $17,500. The guaranty entitlement of any veteran who is granted a loan under this section, or who, before the date of the enactment of the Veterans' Housing Benefits Improvement Act of 1978, was granted a loan under this section, shall be charged with an amount which bears the same ratio to $17,500 as the amount of the loan bears to $33,000.".

SEC. 7. The second sentence of section 1816(a) of title 38, United States Code, is amended to read as follows: "Before suit or foreclosure, the holder of the ob-

ligation shall notify the Administrator of the default; and, within thirty days thereafter, the Administrator (1) shall, under regulations which the Administrator shall prescribe, investigate, with due regard for any reasonable forbearance by the Administrator for the benefit of the veteran, the desirability of paying the holder of the obligation the unpaid balance of the obligation plus accrued interest and receiving an assignment of the loan and security, and (2) after such investigation may, at the Administrator's option, pay the holder of the obligation such unpaid balance and accrued interest and receive such assignment.".

SEC. 8. (a) Section 1818 of title 38, United States Code, is amended by—

(1) inserting in subsection (a) "and prior to August 5, 1964, or after May 7, 1975," after "January 31, 1955,";

(2) striking out in subsection (a)(3) "active duty after such date" and inserting in lieu thereof "such active duty";

(3) inserting in subsection (a) "and section 1802(a) of this title" after "of this section";

(4) striking out subsection (b) in its entirety and redesignating subsection (c) as subsection (b); and

(5) striking out in the catchline **"Veterans who serve after January 31, 1955"** and inserting in lieu thereof **"Service after January 31, 1955, and prior to August 5, 1964 or after May 7, 1975".**

(b) The table of sections at the beginning of chapter 37 of such title is amended by striking out

"1818. Veterans who served after January 31, 1955."

and inserting in lieu thereof

"1818. Service after January 31, 1955, and prior to August 5, 1964, or after May 7, 1975."

SEC. 9. Section 1819 of title 38, United States Code, is amended by—

(1) amending subsections (a) and (b) to read as follows:

"(a)(1) Notwithstanding any other provision of this chapter, any loan to a veteran eligible for the benefits of this chapter, if made pursuant to the provisions of this section, may be guaranteed if such loan is for one of the following purposes:

"(A) The purchase of a lot on which to place a mobile home already owned by the veteran.

"(B) The purchase of a new or used single-wide mobile home.

"(C) The purchase of a new or used single-wide mobile home and a lot on which to place such home.

"(D) The purchase of a new or used double-wide mobile home.

"(E) The purchase of a new or used double-wide mobile home and a lot on which to place such home.

"(2) A loan for any of the purposes described in paragraph (1) of this subsection may include an amount determined by the Administrator to be appropriate to cover the cost of necessary preparation of a lot already owned or to be acquired by the veteran, including the installation of utility connections, sanitary facilities, and paving and the construction of a suitable pad.

"(3) Any loan made for the purposes set forth in subparagraph (C) or (E) of paragraph (1) shall be considered as part of one loan. The transaction may be evidenced by a single loan instrument or separate loan instruments for (A) that portion of the loan which finances the purchase of the mobile home, and (B) the portion which finances the purchase of the lot, plus necessary preparation of such lot.

"(b)(1) Use of entitlement under this section for the purchase of a mobile home unit shall preclude the use of remaining entitlement for the purchase of an additional mobile home unit until the unit which secured the loan has been disposed of by the veteran or has been destroyed by fire or other natural hazard.

"(2) The Administrator shall restore the entitlement of the veteran to all loan guaranty benefits under this chapter when the conditions prescribed in section 1802(b) of this title have been met.";

(2) amending subsection (c) by—

(A) amending paragraph (1) to read as follows:

"(1) Loans for any of the purposes authorized by subsection (a) of this section shall be submitted to the Administrator for approval prior to loan closing except that the Administrator may exempt any lender of a class listed in section 1802(d) of this title from compliance with such prior approval requirement if the

Administrator determines that the experience of such lender or class of lenders in mobile home financing warrants such exemption.";

(B) striking out the first sentence of paragraph (3) and inserting in lieu thereof the following: "The Administrator's guaranty shall not exceed the lesser of 50 per centum of the loan amount or the maximum loan guaranty entitlement available, not to exceed $17,500. Payment of a claim under such guaranty shall be made only after liquidation of the security for the loan and the filing of an accounting with the Administrator."; and

(C) inserting at the end of paragraph (3) the following new paragraph:

"(4) The amount of guaranty entitlement available to a veteran under this section shall not be more than $17,500 less such entitlement as may have been used under this section. Use of entitlement under section 1810 or 1811 shall reduce entitlement available for use under this section to the same extent that entitlement available under section 1810 is reduced to less than $17,500.";

(3) amending subsection (d) to read as follows:

"(d)(1) The maturity of any loan guaranteed under this section shall not be more than—

"(A) fifteen years and thirty-two days in the case of a loan for the purchase of—

"(i) a lot only,

"(ii) a single-wide mobile home only, or

"(iii) a single-wide mobile home and a lot, or

"(B) twenty years and thirty-two days in the case of a loan for the purchase of—

"(i) a double-wide mobile home only, or

"(ii) a double-wide mobile home and a lot.

"(2) Nothing in paragraph (1) shall preclude the Administrator, under regulations which the Administrator shall prescribe, from consenting to necessary advances for the protection of the security or the holder's lien, or to a reasonable extension of the term or reamortization of such loan.";

(4) amending clause (4) of subsection (e) to read as follows:

"(4) the amount of the loan to be paid by the veteran is not in excess of the amount determined to be reasonable, based upon—

"(A) with respect to the portion of the loan to purchase a new mobile home, such cost factors as the Administrator considers proper to take into account;

"(B) with respect to the portion of the loan to purchase a used mobile home, the reasonable value of the property, as determined by the Administrator;

"(C) with respect to the portion of the loan to purchase a lot, the reasonable value of such lot as determined by the Administrator; and

"(D) with respect to the portion of the loan to cover the cost of necessary site preparation, an appropriate amount as determined by the Administrator;";

(5) striking out subsection (g) in its entirety;

(6) redesignating subsections (h) through (n) as subsections (g) through (m), respectively;

(7) striking out the last sentence of subsection (h) (as redesignated by clause (6) of this section) and inserting in lieu thereof the following: "For the purpose of assuring compliance with such standards, the Administrator shall from time to time inspect the manufacturing process of mobile homes sold to veterans utilizing benefits under this chapter; and, for such purchase and the additional purpose of monitoring safety factors involved in the installation of such homes, the Administrator shall from time to time conduct random onsite inspections of mobile homes purchased with such assistance. Notwithstanding the preceding sentence, the Administrator may, at the Administrator's discretion, delegate to the Secretary of Housing and Urban Development the authority and responsibility of the Administrator to inspect such manufacturing process, subject to (1) the acceptance of such delegation by such Secretary, (2) a requirement that the Administrator promptly be provided the full results of such Department of Housing and Urban Development inspections, and (3) the right of the Administrator

at any time to withdraw such delegation in whole or in part and for such period or periods of time as the Administrator determines to be appropriate.";

(8) striking out in subsections (i), (j), and (l) (as redesignated by clause (6) of this section) "subsection (i)" each place it appears and inserting in lieu thereof "subsection (h)"; and

(9) striking out in subsection (l) (as redesignated by clause (6) of this section) "subsection (j)" and inserting in lieu thereof "subsection (i)".

SEC. 10. Section 906 of title 38, United States Code, is amended by inserting at the end thereof the following new subsection:

"(c) The headstone or marker furnished under subsection (a) or (b) of this section may be of any material, including but not limited to marble, granite, bronze or slate, requested by the person entitled to request such headstone or marker, if such requested material is determined by the Administrator to be cost effective and, when the headstone or marker is to be placed in a national cemetery, aesthetically compatible with the cemetery area in which it is to be placed.".

SEC. 11. None of the provisions of, or amendments made by, this Act, other than amendments creating new spending authority, as defined in section 401(c)(2)(C) of the Congressional Budget Act of 1974 (Public Law 93-344), shall be deemed to authorize, directly or indirectly, the enactment of new budget authority.

SEC. 12. The amendments made by this Act shall become effective on October 1, 1978.

Amend the title so as to read:

"An Act to improve the housing programs of the Veterans' Administration, and for other purposes.".

INTRODUCTION

H.R. 12028 was passed by the House of Representatives on July 17, 1978, and in the Senate the measure was referred to the Committee on Veterans' Affairs.

Earlier, on June 15, 1978, the Subcommittee on Housing, Insurance, and Cemeteries of the Committee on Veterans' Affairs, chaired by Senator Richard (Dick) Stone, received testimony on a number of issues relating to VA housing programs, including the issues addressed by the House of Representatives in H.R. 12028. Testimony was received from Dorothy Starbuck, Chief Benefits Director, Veterans' Administration and other representatives of the VA, and representatives of Veterans of Foreign Wars, Disabled American Veterans, Paralyzed Veterans of America, Mortgage Bankers Association, National Association of Home Builders, Manufactured Housing Institute, National Manufactured Housing Federation, and National Housing Law Project.

After reviewing the testimony received during the hearing and the written comments and other documents submitted to it, the full committee met on July 27, 1978, and unanimously voted to report favorably the bill with an amendment in the nature of a substitute and a title amendment.

SUMMARY OF H.R. 12028 AS REPORTED

Basic Purpose

The basic purpose of H.R. 12028 as reported (hereafter referred to as "the Committee bill") is to improve VA housing programs by increasing certain housing-related entitlements, expanding entitlements relating to certain wartime service so as to include Vietnam-era vet-

ıs, and restructuring the VA mobile-home-loan program so as to ke it more similar to the conventional housing loan program.

Summary of Provisions

he Committee bill includes amendments to title 38, United States le, that would:

1. Increase, from $25,000 to $30,000, the maximum grant to assist certain severely disabled veterans to acquire a specially adapted house.

2. Increase, from $17,500 to $25,000, the maximum loan guaranty amount.

3. Extend entitlement under chapter 37 (home, condominium, and mobile home loans) for veterans with wartime service to include veterans of the Vietnam era, thereby reducing, from 181 days to 90 days, such veterans' active duty requirement for eligibility for a VA home loan.

4. (a) Authorize the Administrator of Veterans' Affairs, in consultation with the Secretary of Housing and Urban Development, to set an interest rate for guaranteed loans to make energy-related home improvements at a level higher than that set for guaranteed loans for the purchase of housing.

(b) Specify the types of improvements that could be made to qualify for a guaranteed home-improvement loan for energy-related improvements.

5. Provide for chapter 37 loan guaranties for the purchase of a unit in an approved converted condominium development or project.

6. Require the Administrator to investigate the desirability of exercising the present statutory authority to take an assignment of a loan before allowing any such loan to go to foreclosure.

7. Improve the VA mobile-home-loan program by (a) making it similar to the conventional home loan program by (i) revising the criteria relating to restoration of entitlement following use of loan entitlement to purchase a mobile home to make such criteria parallel to those for restoration of entitlement following use of loan entitlement to purchase a conventional home, (ii) substituting a maximum loan guaranty ($17,500 or 50 percent of the loan) for a dollar maximum loan amount, (iii) increasing the term of years for the purchase of a single-wide mobile home to 15 years, 32 days, and (iv) permiting use of remaining loan entitlement to purchase a mobile home when moving from a conventional home to a mobile home; (b) authorizing the Administrator, under certain conditions, to delegate to the Secretary of Housing and Urban Development responsibility for the inspection of the mobile-home manufacturing process; and (c) adding a requirement that random onsite inspections include the monitoring of safety factors involved in the installation of such homes.

8. Make conforming amendments to the VA's direct loan authority to reflect (a) as to direct loans to purchase conventional housing, the increase made by the Committee bill in the maximum loan guaranty amount, and (b) as to direct loans to purchase mobile homes, the substitution of a maximum loan guaranty for

the current dollar maximum loan amount in the mobile-home-loan program.

9. Authorize the use of any material, including but not limited to marble, granite, bronze, or slate for VA-provided headstones or memorial markers when requested by the person entitled to request the headstone or marker if the Administrator determines that the requested material is cost effective and, if the marker or headstone is to be placed in a national cemetery, esthetically compatible with the cemetery area.

Discussion

Background

The Veterans' Administration provides assistance to help veterans acquire housing in a number of ways. The principal form of such assistance is provided by the loan guaranty program operated under chapter 37 of title 38, United States Code. Through that program, housing credit assistance, in the form of guaranties of loans made by private lenders, is available to eligible veterans. These guaranties are made on loans to purchase conventional homes, condominiums, farm residences, and mobile homes. Also, under chapter 37, in areas of the country where private financing for VA-guaranteed loans is not generally available, the VA provides another form of assistance to help veterans acquire housing—direct loans, in which the VA assumes the role of the lender.

Another form of VA housing assistance is provided to certain severely disabled veterans in the form of grants to assist these veterans acquire specially adapted housing.

Loan Guaranty Program

Assistance under the housing loan guaranty program is primarily through the substitution of the Government's guaranty on a portion of the veteran's loan for other safeguards normally used by lenders such as substantial downpayments or relatively short loan terms.

Eligibilty under current law is generally available to veterans who served during or since World War II. The minimum length of active service necessary for entitlement under current law varies from 90 days for veterans of World War II or the Korean conflict, to 181 days for those veterans who served only between World War II and the Korean conflict or from the end of the Korean conflict to the present.

The Government's guaranty on a loan is limited to a maximum of 60 percent of the loan and is further limited by a maximum dollar amount. Under current law, the upper dollar limitation is $17,500 which means that any loan for an amount in excess of $29,166 would carry less than the maximum statutory guaranty.

The VA loan guaranty program is extremely important both to veterans who are helped in the purchase of homes and to the economy as a whole, which benefits by the stimulus provided by veterans' activity in the housing market. In the last 5 years alone, more than 1½ million veterans have obtained VA-guaranteed loans to purchase homes valued at more than $51 billion.

Direct Loan Program

he VA's direct housing loan program serves as a substitute for the
guaranty program in areas—typically rural areas or small cities
towns not located near large metropolitan areas—identified by
Administrator as "housing credit shortage areas," meaning areas
which private lenders are not generally available to provide VA-
ranteed home loans. In such cases, the VA can serve as the lender
make direct loans to eligible veterans for the purchase or improve-
t of housing.

lthough the utilization of this program has been declining in
nt years (2,785 such loans were made in fiscal year 1976 and the
's estimate for fiscal year 1979 if for 2,515 such loans) due to a
g availability of private funds for guaranteed loans, the program
ains an important asset to some veterans.

Specially Adapted Housing Grants

nder the specially adapted housing grant program, veterans with
ain permanent and total service-connected disabilities affecting
motion so that they require housing adapted with special fixtures
other modifications are eligible for a grant from the VA to assist
a to acquire such housing. Such severely disabled veterans have
nctive housing needs such as wider doorways to accommodate
elchairs, ramps instead of stairs, oversized and specially equipped
rooms, and the like; and because these requirements substantially
ease the cost of a house, the VA provides a grant to assist the
ble veteran acquire suitable housing. In addition, VA employees
k closely with such severely disabled veterans and with the
gners and builders of such a specially adapted new home or of
ifications to an existing structure to meet the veteran's needs, so as
rovide expert help in the process of creating a specially adapted
This grant is limited to 50 percent of the cost to the veteran of
ousing unit and the land on which it is located, up to a maximum
5,000.

Home Loan Guaranty

e Committee bill would amend section 1810 of title 38 by increas-
from $17,500 to $25,000, the maximum home loan guaranty entitle-
for the purchase of a conventional home, a single-family resi-
l unit in a condominium, or a farm residence.

e VA loan guaranty is designed to substitute, in large measure,
down payment when a veteran purchases a house. Under present
the guaranty is limited to 60 percent of the loan amount up to a
mum guaranty of $17,500. It generally permits veterans to obtain
for residences without a down payment or with a lower down
ent than would otherwise be required.

wever, under the current maximum, only loans that do not exceed
66 can be guaranteed to the full 60-percent level; all above that
nt are guaranteed at a lower percentage. The average guaranteed
n fiscal year 1977 was $34,500 and, in the first half of fiscal year
$38,016. Thus, it is apparent that lenders are, with increasing
ency, not receiving the maximum 60-percent protection. As a
, lenders are becoming less willing to make VA-guaranteed loans.

The following table compares the percentage of the loan guaranteed at selected amounts with a 60-percent or $17,500 maximum guaranty and a 60-percent or $25,000 maximum guaranty:

TABLE 1.—PERCENTAGE OF LOAN GUARANTEED—(60-PERCENT GUARANTEE)—$17,500 MAXIMUM/$25,000 MAXIMUM

	60-percent/ $17,500	60-percent/ $25,000
Loan amount:		
$20,000	60.0	60
$30,000	58.0	60
$40,000	43.0	60
$41,677	41.9	60
$50,000	35.0	50
$60,000	29.0	42
$70,000	25.0	36
$80,000	22.0	31
$90,000	19.0	28
$100,000	18.0	25

According to the VA, the average guaranty to lenders in the first half of fiscal year 1978 was approximately 42.7 percent. This is a decline of about 3 percent from fiscal year 1977 and is the lowest level of protection since fiscal year 1968.

By increasing the maximum loan guaranty entitlement to $25,000 and thus assuring lenders a greater degree of protection, the Committee bill should increase lender willingness to make VA-guaranteed loans. In addition, this increase would bring the VA loan guaranty more in line with the statutory intention of providing a 60-percent guaranty to the lender.

Eligibility for Home Loan Benefits for Vietnam-Era Veterans

The Committee bill would amend section 1802(a) of title 38 by reducing, from 181 days to 90 days, the active-duty requirement for Vietnam-era veterans seeking VA home loan benefits. Under current law, veterans with active service of 90 or more days, any part of which occurred during World War II or the Korean conflict, are eligible for VA home loan benefits. Veterans whose only active service was after the end of World War II (July 25, 1947) and prior to the beginning of the Korean conflict (June 27, 1950), or after the end of the Korean conflict (January 31, 1955), must have served on active duty for a period of more than 180 days to be eligible for VA home loan benefits.

Although the Vietnam era (August 5, 1964, to May 7, 1975) is considered a period of war for the purpose of eligibility for other veterans' benefits, the present criteria place Vietnam-era veterans in the same category as veterans with only peacetime service.

The Committee believes that the same chapter 37 eligibility standards applied to veterans of World War II and the Korean conflict should be applied to Vietnam-era veterans. For that reason, the Committee bill would shorten the length-of-service requirement for Vietnam-era veterans to 90 days of active-duty service (while leaving the requirement at more than 180 days for post-Vietnam-era veterans). This equitable change would expand VA housing program eligibility

lude approximately 168,000 additional veterans with Vietnam-
rvice.

Converted Condominiums

Committee bill would amend section 1810 of title 38 to make
le for a chapter 37 guaranty, a loan for purchase of a single-
y unit in an apartment building that has been converted into a
minium housing project. Although current law allows VA loan
nties for units in new condominium projects or for units in a
ure built and sold as a condominium, there is currently no pro-
for units in existing structures that have been converted into
minium.

e VA has expressed opposition to the inclusion of converted
minium in the loan guaranty program. Its opposition is based
e premise that many of the apartment buildings recently con-
l into condominium projects are older buildings which may have
ural defects or other significant problems related to their age.
ldition, because it currently has no program of inspection for
rted condominium projects, the VA is concerned that it could
dequately protect the interests of veterans who wish to purchase
in such condominiums. The VA believes that, without adequate
ction standards to determine the soundness of an older building,
ans may be exposed to unforeseen capital expenditures, such as
eplacement of a furnace or heating system, that would fall on all
rs in a condominium project and could result in the veteran's in-
y to meet mortgage payments.

e Committee favors the inclusion of converted condominiums in
'A loan program. These condominiums provide a relatively low-
ousing alternative to veterans who do not have the means to buy
entional housing, and excluding such units from coverage works
rdship on those veterans. With regard to the inspection of con-
d condominium units, the Committee notes that the Department
lousing and Urban Development (HUD) administers a similar
guaranty program for converted condominiums and has estab-
d guidelines for the inspection of buildings converted into condo-
um projects. The Committee believes that these guidelines could
lopted or modified by the VA in inspecting converted condomini-
and would insure adequate protection for the veteran wishing to
such a home. Moreover, in light of the fact that the current
anty program includes the purchase of a unit in a structure
nally built as a condominium, regardless of the age of the struc-
it seems clear that it is necessary for the VA soon to develop
lards to assess the soundness of older multifamily structures in
event.

VA Loan Assignment Practices

nder present law (section 1816 of title 38) and implementing regu-
ns (section 36.4318 of title 38, Code of Federal Regulations), the
has authority to take an assignment of a VA-guaranteed loan
the holder of the loan. The purpose of this assignment authority
allow the VA the option of exercising forbearance toward a
ran who is experiencing financial difficulties so that a feasible re-
ment arrangement, perhaps more lenient than the mortgage loan
er might be amenable to, might be worked out. Such arrangements

can save the loan from foreclosure and enable the veteran to keep his or her home.

Although the VA has this authority and has, on numerous occasions, indicated its commitment to the use of it in appropriate cases, there is some question about the extent of the VA's activity in this regard. For instance, at the June 15 hearing before the Subcommittee on Housing, Insurance, and Cemeteries, one witness testified that in Los Angeles region, from the years 1974 through 1976, there were more than 6,000 foreclosures involving VA-guaranteed loans, and that not once in those 6,000 cases did the VA use the assignment authority. In response to posthearing questions on this testimony, the VA did not contest these figures but explained that it is active in servicing loans long before a default becomes insoluble and that it urges lenders to exercise forbearance toward veterans experiencing repayment problems so that, if such forbearance by the lender fails, there is little purpose in the VA taking further action to save a loan.

Although the Committee appreciates the VA's role in loan servicing, it is not convinced that adequate efforts are being made to help veterans remain in their homes and to avoid foreclosure. The Committee's concern regarding foreclosures involves not only the impact that a foreclosure has on the individual veteran, in terms of financial and social costs, but extends to the wider concerns regarding the costs of foreclosure on the economy in general. Certainly, if an individual veteran is unable to meet any reasonable repayment schedule, the VA should allow a loan to go to foreclosure. However, before doing so, the Committee believes that the VA should make every reasonable effort to avoid such a result.

Accordingly, the Committee bill would require the VA, within 30 days following notice from the note holder of intention to institute suit or foreclosure (the present period within which the VA may, by law, exercise the assignment authority), to investigate the desirability of taking an assignment of the loan. This change would leave the Administrator free to allow a loan to go to foreclosure when that result is inevitable, while indicating the Committee's strong concern that the decision to do so be made in each case after careful consideration of the facts relating to the individual's current and probable future financial circumstances.

Solar-Energy and Energy Conservation Home Improvement Loans

During the first session of the 95th Congress, the Committee reported and the Senate passed, as section 311 of S. 457, the GI Bill Improvement Act of 1977, a provision which would have authorized additional VA housing loan guaranty and loan assistance to veterans for the purpose of assisting them to fund home improvements involving the installation of solar energy units or other energy-conservation improvements. Although that provision was ultimately dropped in the House of Representatives in favor of a requirement for a study by the VA, in consultation with the Department of Housing and Urban Development, to determine the most effective means of using VA housing programs to encourage veterans to install solar energy systems and to apply residential energy conservation measures, the Committee and Senate action indicated a commitment to the proposition that the VA home loan program can and should be used in support of the national energy conservation program.

In April 1978, the VA submitted the report, entitled "A Study of VA Housing Solar Energy and Weatherization Programs," which had been mandated by section 311 of the GI Bill Improvement Act of 77. Although the VA reported not finding any significant interest among lenders or veterans with respect to home improvement loans for energy-related matters, the Committee remains convinced that the national interest requires that all feasible positive actions be taken in the area of energy conservation and that VA home loan programs, because of their wide impact, are an important vehicle to carry a share of the effort in this respect.

To this end, the Committee bill includes a provision specifically authorizing the Administrator, in consultation with the Secretary of Housing and Urban Development, to set an interest rate for loans for home improvements involving energy-related improvements, at a rate higher than the interest rate for loans for the purchase of homes. This is a step that the VA recommended for exploration in its report. The Committee bill also specifies the types of improvements that can be undertaken to qualify for the loan.

As the Committee noted in its report on S. 457 last year (S. Rept. No. 95-468), residential energy use accounts for 20 percent of the total energy consumed in the United States per year, and it is widely acknowledged that residential use is characterized by many energy-inefficient practices that could be curtailed by wider utilization of energy conservation measures. Further, oil and gas, fuels in relatively short supply in the United States, are heavily used for residential energy purposes. As noted in the Committee report on S. 457, at current production and usage levels, the United States will exhaust its domestic reserves of oil and gas by the year 2020. Solar energy stands as an alternative to these fuels, and the Committee believes that its use should be encouraged on all fronts, the VA home loan program among them.

As noted above, the approach adopted in the Committee bill differs somewhat from that proposed by S. 457 last year. Whereas in S. 457 the approach relied on an increase in basic entitlement for a loan guaranty, with the additional entitlement available specifically for solar energy or other energy conservation improvements, the Committee bill would provide specific authorization for the Administrator, in consultation with HUD, to set an interest rate for loans for such solar energy or other energy conservation home improvements at a level higher than the rate set by the Administrator for loans to purchase homes. This approach was chosen for two principal reasons. First, with the $7,500 increase in maximum loan guaranty entitlement provided in another provision in the Committee bill (the amendments to section 1810 of title 38 made by section 5(2) of the Committee bill), all eligible veterans will automatically receive additional entitlement which may be applied to any authorized purpose, including a home improvement loan for energy-related improvements. Thus, a specially targeted increase in entitlement would no longer seem necessary at this time. Second, the Committee believes that use of the authority to establish a higher interest rate for guaranteed home improvement loans for energy-related purposes should help to stimulate the lending market to make such loans and, at the same time, make it possible for interested veterans to secure such home improvement loans on terms and conditions more favorable than are currently available because the veteran would have the guaranty of the Government in support of a portion of the loan.

The Committee bill contemplates two general categories of home improvements under the general rubric of "energy related improvements," those involving solar energy systems, and those focusing on residential energy conservation measures. Also, the improvements from the two categories could be combined in a single home improvement package.

Under the solar energy heading, the Committee bill includes "solar heating," "solar heating and cooling," and "combined solar heating and cooling," as defined in clauses (1) and (2) of section 3 of the Solar Heating and Cooling Demonstration Act of 1974 (42 U.S.C. 5502). In that act, the terms are defined as follows:

> [t]he term "solar heating," with respect to any building, means the use of solar energy to meet such portion of the total heating needs of such building (including hot water), or such portion of the needs of such building for hot water (where its remaining heating needs are met by other methods), as may be required under performance criteria prescribed by the Secretary of Housing and Urban Development utilizing the services of the Director of the National Bureau of Standards, and in consultation with the Director of the National Science Foundation and the Administrator of the National Aeronautics and Space Administration; and the terms "solar heating and cooling" and "combined solar heating and cooling," with respect to any building, mean the use of solar energy to provide both such portion of the total heating needs of such building (including hot water) and such portion of the total cooling needs of such building, or such portion of the needs of such building for hot water (where its remaining heating needs are met by other methods) and such portion of the total cooling needs of a building, as may be required under performance criteria prescribed by the Secretary of Housing and Urban Development utilizing the services of the Director of the National Bureau of Standards, and in consultation with the Director of the National Science Foundation, and the Administrator of the National Aeronautics and Space Administration, and such term includes cooling by means of nocturnal heat radiation, by evaporation, or by other methods of meeting peakload energy requirements at non-peakload times.

In addition, as used in the Committee bill and in section 311(a) of S. 457, as passed by the Senate last year and explained in the report accompanying that bill (S. Rept. 95–468, at p. 127), the terms include a passive system based on conductive, convective, or radiant energy transfer; the term "passive system" includes, but is not limited to, window and skylight glazing, thermal floors, walls and roofs, movable insulation panels (in conjunction with glazing), portions of a residential structure which serve as solar furnaces so as to add heat to residences, double pane window insulation, or other components designed to enhance natural transfer of energy for the purpose of heating or heating and cooling a residence as determined by the Administrator.

Continuing with the definitions included in S. 457, the Committee bill would define "a residential energy conservation measure" as: caulking and weather stripping of all exterior doors and windows; furnace efficiency modifications limited to replacement burners, boilers, or furnaces which devices are designed to reduce the firing rate or to

ieve a reduction in the amount of fuel consumed as a result of in-ased combustion efficiency, devices for modifying flue openings ich will increase the efficiency of the heating system, and electrical mechanical furnace ignition systems which replace standing gas ot lights; clock thermostats; ceiling, attic, wall, and floor insula-n; water heater insulation; storm windows and doors; heat pumps; l such other measures as the Administrator may by regulation iden-y for the purposes of this provision.

The Committee bill provision relating to the setting of an appro-ate interest rate for loans for energy-related home improvements uld require the Administrator to consult with the Secretary of using and Urban Development for the purpose of helping to foster oordinated national policy on interest rates on federally guaranteed insured loans for energy-related home improvements. It is the Com-ttee's expectation that all activity in the VA's efforts to encourage rgy conservation under its home loan program will be done in con-t not only with HUD but with all other Federal agencies involved similar programs, including the Department of Energy, the Na-nal Aeronautical and Space Administration, the Bureau of Stand-ls, and any other appropriate agencies.

n authorizing the adoption of a specific interest rate for loans to ke energy-related home improvements, the Committee is mindful the January 30, 1978, opinion of the Office of the General Counsel, terans' Administration, that stated that:

> The Administrator is free to prescribe an interest rate for VA guaranteed loans for the repair, alteration, or improvement of a dwelling (section 1810(a)(5) of title 38) that is different from the interest rate for guaranteed loans for some or all of the other purposes specified in section 1810(a).

e Committee's action in specifically authorizing the adoption of ifferent and higher interest rate for energy-related improvements rsuant to new section 1810(a)(7) is not intended to limit or restrict Administrator's existing authority to set different interest rates this purpose or other purposes under section 1810(a) as discussed he above mentioned option of the Office of General Counsel. Rather, Committee bill is declaratory of existing law on this point, and Committee specifically affirms its view that the Administrator sently has statutory authority to set different interest rates as ap-priate and stresses that the authority in his bill is designed to reflect Committee's commitment to the importance of energy-related home provements and to provide appropriate context for coordinated rcise of that authority with respect to home improvement loans energy-related purposes.

Mobile-Home Loan Program

The Committee bill would restructure the VA mobile home program ction 1819 of title 38) to make it more like the current program conventional home loans. First, the Committee bill would sub-ute a maximum loan guaranty (50 percent of the loan up to a ximum guaranty of $17,500) for the present statutory maximum lar loan amounts. Second, it would increase the maximum term of

years for which a loan for a single-wide mobile home can be financed from 12 years and 32 days to 15 years and 32 days. Third, the Committee bill would provide the same criteria for restoration of loan entitlement as in the conventional housing loan program. Fourth, it would change the current mobile-home loan program to allow a veteran to use his or her remaining entitlement when moving from a conventionally built home to a mobile home. Fifth, the Committee bill would provide for some changes in the current VA mobile-home inspection requirements.

Under current law, mobile-home loans are guaranteed up to 50 percent of the face amount of the loan and guaranteed loans cannot exceed $12,500 for a single-wide mobile home and $20,000 in the case of a double-wide mobile home. The maximum term of such loans are 12 years and 32 days and 20 years and 32 days, respectively. Present law limits restoration of section 1819 loan guaranty entitlement to a single time for a veteran, provided the first loan has been repaid in full.

Purposes for which loans may be used

By restructuring the current provisions of section 1819, the Committee bill would clarify the purposes for which a guaranteed mobile home loan may be used. These purposes include the purchase of a lot on which to place a mobile home, the purchase of a new or used single-wide or double-wide mobile home and the lot on which to place such a home, and the amount needed to cover the cost of necessary preparation of a lot already owned or to be acquired by the veteran, including the installation of utility connections, sanitary facilities, and paving and construction of a suitable pad.

Loan guaranty changes

The Committee bill would amend section 1819(c)(3) of title 38 by providing for a maximum loan guaranty of 50 percent of the loan amount up to a guaranty of $17,500. These limitations correspond to those for the VA conventional home loan program in present law under which that maximum loan guaranty is 60 percent of the loan amount up to a guaranty of $17,500. Current law limits the guaranty of a loan to purchase a mobile home to 50 percent of the loan and sets a limit on the amount of the loan a veteran can obtain for a mobile-home, as follows:

Single-wide mobile home	$12,500 (plus appropriate additional amount to cover necessary site preparation of already owned lot).
Double-wide mobile home	$20,000 (plus appropriate additional amount to cover necessary site preparation of already owned lot).
Single-wide mobile home and undeveloped lot.	$20,000 ($12,500 maximum for the mobile home, plus additional appropriate amount to cover necessary site preparation).
Double-wide mobile home and undeveloped lot.	$27,500 ($20,000 maximum for the mobile home, plus additional appropriate amount to cover necessary site preparation).
Double-wide mobile home and suitably developed lot.	$20,000 ($12,500 maximum for the mobile home).
Single-wide mobile home and suitably developed lot.	$27,500 ($12,000 maximum for the mobile home).
Undeveloped lot	$7,500 (includes amount to cover necessary site preparation).
Suitably developed lot	$7,500.

Although these limits on the amounts of mobile home loans may not have posed significant problems in the past, the costs of a mobile home have increased sharply in recent years due to inflation, the increasing quality of the workmanship in the construction of such homes, and the promulgation and enforcement of HUD standards relating to mobile home construction and safety; and the higher costs have reduced the relative value of the VA guaranty. This has resulted in a decrease in recent years in the utilization of this VA entitlement. Relative to the total number of VA loans, the proportion of VA mobile home loans is presently lower than seems desirable to the Committee.

According to the VA, in September 1976, the price of 42 percent of all mobile homes sold at retail exceeded $12,000, and in October 1977, the price of 70 percent of all mobile homes so sold exceeded $12,500. The average price of a single-wide mobile home in 1977 was $11,865, and of a double-wide mobile home, $19,775. According to the Manufactured Housing Institute, in 1978, average prices were expected to increase to $13,407, and $22,345, respectively. Thus, prospects for the veteran to use a VA loan guaranty to purchase a mobile home under the current program are growing dimmer each year.

The change proposed by the Committee bill, from a 50-percent guaranty with a loan maximum to a guaranty of 50 percent of the loan or $17,500, whichever is the lesser, would allow loans to be made for higher amounts as follows:

TABLE 2.—PERCENTAGE OF LOAN GUARANTEED—50 PERCENT GUARANTEE $12,500 LOAN MAXIMUM—50 PERCENT GUARANTEE TO $17,500 (NO LOAN MAXIMUM)

SINGLE-WIDES

[In percent]

Face amount of loan	Under current law—50 percent guarantee with $12,500 loan maximum	Under committee bill—50 percent guarantee up to $17,500 (no loan maximum)
7,000	50	50
0,000	50	50
2,500	50	50
5,000		50
0,000		50

DOUBLE-WIDES

	50 percent guarantee with $20,000 loan maximum	50 percent guarantee up to $17,500 (no loan maximum)
2,000	50	50
4,000	50	50
6,000	50	50
8,000		50
0,000		50
2,000		50
4,000		44

Another reason for the changes that would be made by the Committee bill in the mobile-home-loan program is that most mobile homes are financed in the same manner as automobile loans, that is, as consumer credit transactions. Mortgage companies and banks, the traditional sources of financing for conventional VA loans, have been

reluctant to finance VA mobile-home loans. This is due, in part, to the higher risks presented by such loans and, in the case of banks, to the fact that the VA-guaranteed loans bear lower interest rates than consumer loans originated by the dealer and sold to the bank and are, therefore, less attractive.

The Committee believes that these changes in the VA mobile-home program would make the program more attractive to lenders by making it more closely parallel to the conventional program and, thus, would increase the opportunity for veterans to obtain loans to purchase mobile homes.

Term of years for a VA mobile-home-loan guaranty

The Committee bill would amend section 1819(d)(1) of title 38 to increase the term of years for a VA loan guaranty for the purchase of a single-wide mobile home or a single-wide mobile home and a lot on which to place such a home for 12 years and 32 days to 15 years and 32 days.

The Committee supports this increase in the term of years for a VA loan guaranty because it would result in a decease in the veteran's monthly loan payments, thereby making mobile homes purchases more affordable and permitting more veterans to qualify for these loans. This change would be particularly helpful to veterans in lower income brackets.

Criteria for mobile-home-loan evaluations

The Committee bill would amend section 1819(e)(4) of title 38 in order to clarify the Administrator's role in determining the reasonableness of the amount of a mobile-home loan. Specifically, this provision would insure that loans would not be guaranteed when the amount of the loan is in excess of the amount determined reasonable by the Administrator based upon—

(1) The costs involved where the veteran is purchasing a new mobile home;

(2) The reasonable value of the homes where the veteran is purchasing a used mobile home;

(3) The reasonable value of any lot which the veteran is purchasing; and

(4) The appropriate amount of the costs of any necessary site preparation.

Mobile home inspections

The Committee bill would modify existing requirements in present section 1819(i) of title 38 for the VA to conduct two types of inspections of mobile homes under the mobile home loan program. This dual requirement calls for the VA to make periodic inspections of the manufacturing process of mobile homes to be sold to veterans using VA loan guaranty assistance and to conduct random onsite inspections of mobile homes purchased by such veterans.

The Committee bill would alter these requirements in two respects. First, the Administrator would be permitted to delegate the VA's responsibility for inspecting the manufacturing process to the Secretary of Housing and Urban Development, subject to three conditions: (1) Acceptane of that delegation by the Secretary, (2) a requirement to be expressed in the delegation of authority that the Administrator be provided the full results of such Department of Housing and Urban Development (HUD) inspections, and (3) the right of the Adminis-

trator, set forth in that delegation instrument, to withdraw all or part of the delegation when appropriate. Second, the bill would add to the onsite inspection requirement responsibility to monitor safety factors involved in the installation of mobile homes purchased with VA assistance.

The Administration has proposed elimination of both mobile-home-inspection requirements, and the House of Representatives, on September 12, 1977, passed administration-requested legislation, H.R. 4341, to that effect. A counterpart measure, S. 1643, was introduced by the chairman of this Committee, by request, on June 8, 1977. On July 17, 1978, the House of Representatives passed, as section 7(f) of H.R. 12028, provisions similar to H.R. 4341.

In support of the administration's proposal, the VA pointed out that the National Mobile Home Construction and Safety Standards Act of 1974 (title VI of Public Law 93–383) included a requirement that HUD establish mobile home construction and safety standards and conduct inspections necessary to enforce these standards. It is the VA's position that, because it adopted the standards issued by HUD and because HUD, or State agencies designated by HUD, conduct enforcement inspections using such standards, it is a duplication of effort for the VA also to conduct such inspections. The Committee has carefully examined the HUD inspection program and submitted and received responses (made part of the hearing record on this legislation) to numerous interrogatories, and, on the basis of this examination, the Committee does not oppose a carefully drafted delegation to HUD. However, the Committee bill continues to assign to the VA ultimate responsibility, at least on a back-up basis, to assure that veterans purchasing mobile homes with VA guaranties are adequately protected.

Accordingly, the Committee bill would authorize the VA to delegate to HUD the task of conducting (directly or through State or local agencies) inspections of the manufacturing process, subject to prompt VA access to the results of HUD (or HUD-designee) inspections and the right of the Administrator to withdraw at any time part or all of the delegation and for such period of time the Administrator deems appropriate. In addition, the existing requirement that the VA include in the Administrator's annual report to Congress the results of the inspections of the manufacturing process is unchanged by the Committee bill.

The VA's rationale in support of its proposal to eliminate the random onsite inspections was grounded on an interpretation of Public Law 91–506, enacted on October 3, 1970, which created the VA's mobile home program and originally mandated the onsite inspections. The VA indicated that it believed these inspections had a twofold purpose: first, to insure that veterans received a quality product, and, second, to evaluate the program in order to provide data to the Congress for the Congress use in deciding whether to extend the mobile home program beyond its original termination date of July 1, 1975. The VA indicated further that, because the first purpose is served by the HUD manufacturing process inspections and the second obviated by the Congress action in Public Law 93–569 repealing the termination date for the program, the random onsite inspections are no longer necessary.

Regardless of the original purpose of the onsite inspections, the Committee feels strongly that such inspections continue to serve important purposes helpful to the VA and the Congress in their continu-

ing assessment of the mobile-home loan guaranty program and tha
the requirement to make such inspections should be strengthene
(rather than eliminated) in order to include a requirement that, du
ing such onsite inspections, the VA monitor safety factor involved i
the installation of mobile homes purchased by veterans.

The Committee has adopted this position for a number of reasons
First, HUD does not conduct onsite inspections, and the Committe
recognizes that a number of problems relating to a particular mobil
home can arise between the time it leaves a manufacturing plant an
the time it is set up at the site where it will be occupied. Mobile homes
particularly doube-wide units, are vulnerable to structural damage
during the transportation to dealers and to home sites, and the Com-
mittee believes it is important, therefore, that the VA and the Con-
gress have a direct source of information on that type of problem. The
Committee is further concerned that the VA remain active in monitor-
ing the actual installation of mobile homes and that it not rely solely
on the completion of a placement certificate by the mobile-home dealer
and the veteran as evidence of a safe installation. The Committee un-
derstands and appreciates that such certificates include a statement to
the effect that the mobile home in question is properly installed; but
the Committee continues to have concerns arising, in part, from the
VA's reports of the results of its onsite inspections. For example, in
the Administrator's 1976 annual report to the Congress, the VA re-
ported making 810 onsite inspections of mobile homes purchased with
VA assistance and noted that only 39 percent of the units inspected
had tiedowns adequate to withstand hurricane-force winds. Installa-
tion of such tiedowns is important because a mobile-home unit can be
blown over and severely damaged by high winds. Random onsite in-
spections should help the VA check for such items as tiedowns and
other significant safety and liveability aspects of the installation of
the units inspected and work to bring about a better safety record.

In acting to retain the inspection requirements, the Committee wishes
to emphasize its views that the mobile-home-loan program is an im-
portant facet of the overall VA housing assistance program, partic-
ularly because it offers lower income veterans a housing alternative,
and, hence, that the VA must remain active in monitoring the quality
and safety of mobile homes in order to protect those veterans who
purchase them.

Specially Adapted Housing Grant Increase

The Committee bill would amend section 802 of title 38 to increase,
from $25,000 to $30,000, the maximum amount of specially adapted
housing grants. These grants are designed to assist certain severely
disabled veterans to acquire specially adapted housing.

Under current law, the specially adapted housing grant is limited
to 50 percent of the total cost of the house, up to a maximum grant of
$25,000. The current maximum limit was established in 1974 when the
average cost of construction of such a house was $53,000. Since that
time, the average cost has risen to over $66,000. By raising the maxi-
mum limit for a specially adapted housing grant from $25,000 to $30,-
000, the Committee bill would enable a majority of veterans who are
eligible for this benefit to obtain a grant which will approximate 50
percent of the cost of a home and thereby help meet the needs of this

special group of veterans who have been so severely disabled in our Nation's service.

Material for VA-Provided Headstones or Memorial Markers

The Committee bill would amend section 906 of title 38 to authorize the Administrator to provide headstones and memorial markers made of any material requested by the veteran's survivors, including (but not limited to) marble, granite, bronze, or slate, if the Administrator determines the requested material to be cost effective and, if the headstone or marker is to be placed in a national cemetery, esthetically compatible with the cemetery area.

Currently, the materials used for VA-provided headstones and markers are marble, granite, and bronze. Slate is not used because the VA believes that slate lacks the uniform quality, color, and durability to be a suitable material for VA-provided headstones and markers. The Committee recognizes, however, that slate has long been widely used in cemeteries in parts of the country and that the highest grade of slate has qualities of durability and uniformity comparable to marble and granite. Thus, it is the Committee's view that, if a particular material is requested by the veteran's survivors, and if the Administrator determines that the requested material is cost effective and, if proposed for placement in a national cemetery, otherwise compatible with the cemetery area, the VA should provide headstones and markers made of marble, granite, bronze, slate, or any other requested material. In adopting this view, the Committee emphasizes that it is not restricting the Administrator's discretion in providing headstones or memorial markers by mandating the use of any particular material; rather the Committee is requiring that the Administrator give full and appropriate consideration to the desires of the survivors of eligible veterans as to the particular composition of the headstone or marker for the veteran's grave.

Cost Estimates

In accordance with section 252(a) of the Legislative Reorganization Act of 1970 (Public Law 91–510, 91st Congress), the Committee, based on information supplied by the Congressional Budget Office, estimates that the 5-year cost resulting from the enactment of the Committee bill would be $4.4 million in fiscal year 1979; $4.2 million in fiscal year 1980; $5.9 million in fiscal year 1981; $6.5 million in fiscal year 1982; and $6.3 million in fiscal year 1983.

A detailed breakdown of costs and cost-savings, as estimated by CBO, over the 5-year period follows:

CONGRESSIONAL BUDGET OFFICE—COST ESTIMATE

1. Bill number: H.R. 12028.
2. Bill title: Veterans Housing Improvements Act of 1978.
3. Bill status: As ordered reported by the Senate Committee on Veterans Affairs, July 27, 1978.
4. Bill purpose:

Section 2: Would increase the maximum specially adapted housing grant from $25,000 to $30,000.

Section 3: Would reduce the active-duty requirement for Vietnam era veterans for VA housing loans from 181 days to 90 days.

Section 4: Would authorize the administration, in consultation with the Secretary of HUD, to set an interest rate for energy related home improvement loans at a higher level than that for conventional housing loans.

Section 5: Would authorize the use of veterans' loan guarantees for the purchase of converted condominiums. Under current law the use of loan guarantees for condominiums is restricted to new condominiums.

Section 6: Would increase the maximum loan guaranty entitlement from $17,500 to $25,000.

Section 7: Would provide that, before a VA-guaranteed loan is allowed to go to foreclosure, the VA must evaluate the desirability of taking an assignmnt of the loan.

Section 9: Would restructure the VA mobile-home-loan program to accomplish the following:

Substitute a maximum loan guaranty (50 percent of the loan up to $17,500) for the current limitations on the amount of guaranteed loans.

Increase the term of years for a loan for a single-wide mobile home from 12 to 15 years.

Provide for the same criteria for restoration of loan entitlement as applies to the conventional housing loan program.

Authorize the use of remaining loan entitlement for a mobile home.

Allow the Administrator to delegate the inspection of the mobile home manufacturing process to HUD.

Specify that the on-site inspection of mobile homes by VA include a check for safety factors involved in the installation of such homes.

Section 10: Would substitute a maximum loan amount for direct mobile home loans for the current limitation.

Section 11: Would authorize the use of slate for VA-supplied headstones and memorial markers in addition to the currently used marble, granite and bronze. In addition, this section would allow the individual requesting the headstone to specify the material so long as the administration finds it to be cost-effective and, if placement is to be in a national cemetery, esthetically compatible with the cemetery.

Section 12: Specifies that amendments made by S. 12028 would take effect on October 1, 1978.

5. Cost estimate:

[By fiscal years, in millions of dollars]

	1979	1980	1981	1982	1983
Sec. 2	4.4	4.2	4.2	3.7	2.6
Sec. 3	(1)	(1)	(1)	(1)	(1)
Sec. 4	(1)	(1)	(1)	(1)	(1)
Sec. 5	(1)	(1)	(1)	(1)	(1)
Sec. 6	(1)	(1)	1.1	1.6	1.8
Sec. 7 [2]	(2)	(2)	(2)	(2)	(2)
Sec. 9	(1)	(1)	.6	1.2	1.9
Sec. 10	(1)	(1)	(1)	(1)	(1)
Sec. 11	0	0	0	0	0
Total	4.4	4.2	5.9	6.5	6.3

[1] Less than $500,000.
[2] See "Basis for estimate" section.
[3] Not available.

The cost of this bill fall within budget function 700.

6. Basis for estimate:

Section 2: Costs resulting from the increase in the specially adapted housing grant program are based on VA participation rate estimates. Since the maximum benefits is usually granted, it is assumed that all grant recipients would receive the full $5,000 increase.

Sections 3, 4, and 5: These three sections all extend entitlement of the home loan guaranty programs. As these programs operate at a net cost to the Federal Government, any increase in participation in the programs would result in additional costs. Since, however, all loans guaranteed by VA are secured and the cost of defaults is offset by the sale of the property, the cost to the Government per loan is small. It is not expected that the net cost of these three sections would be significant.

Section 6: The cost of increasing the maximum loan guaranty level is based on VA estimates of loan terminations and claims. The number of terminations is estimated to increase from 7 in 1978 to 511 in 1983.

Section 7: In the time frame necessitated by the deadline for filing the report on this bill, it was not possible to obtain from VA a determination of how this section would be implemented. Without such a determination, it is not possible to estimate the cost of this section.

Section 9: Improving the mobile home loan program would increase outlays in the loan guaranty revolving fund. It is estimated that the number of new loans resulting from these provisions would range from 1,150 in 1979 to 2,750 in 1983.

Section 10: Since the direct loan program operates at a net income to the Federal Government, the improvement of the direct mobile-home-loan program would result in a slight savings in Federal costs.

Section 11: As slate is not more expensive than the other materials available, there should be no cost to this provision.

7. Estimate comparison: None.

8. Previous CBO estimate: On May 3, 1979, CBO submitted to the House Committee on Veterans' Affairs a cost estimate for H.R. 12028 as ordered reported by that committee. Total outlays shown in that estimate ranged from $4.4 million in fiscal year 1979 to $6.3 million in 1983. H.R. 12028 as ordered reported by the Senate Veterans' Affairs Committee contains changes in several provisions contained in the House bill as well as a number of new provisions.

9. Estimate prepared by: K. W. Shepherd.

10. Estimate approved by:

C. G. Nuckols,
(For James L. Blum,
Assistant Director for Budget Analysis).

Regulatory Impact Statement

In compliance with paragraph 5 of rule XXIX of the Standing Rules of the Senate, the Committee on Veterans' Affairs has made an evaluation of the regulatory impact which would be incurred in carrying out the provisions of the Committee bill. The results of that evaluation are described below.

A. Estimate of the numbers of individuals and businesses who would be regulated, and a determination of the groups and classes of such individuals and businesses.

No provisions of the Committee bill would cause changes in the law resulting directly in the regulation of any individuals or businesses. In expanding the eligibility requirements for veteran participation in VA housing loan guaranty programs and making various improvements in such programs designed to increase their attractiveness both to veterans and private lenders, however, the Committee bill would result in the voluntary participation of such individuals and businesses in those programs. Although the effect of the Committee bill on veterans using the more attractive benefits could not reasonably be considered regulation, the requirements imposed on banks and similar institutions might be. Although the Committee expects the level of activity in various VA housing loan guaranty programs to be significantly higher than it would be in the absence of the enactment of the Committee bill, the Committee does not expect that a substantial number of businesses not presently participating in such programs will begin to participate in them as a result of the Committee bill.

Given the prominence of VA housing loan guaranty programs, the number of residential construction firms building units that will eventually be sold to veterans using VA home loan guaranty entitlement may increase significantly under the Committee bill.

B. Determination of the economic impact of such regulations on individuals, consumers, and businesses affected.

The economic impact of such regulations on the overall number of financial institutions expected to be attracted to initial participation in VA housing loan guaranty programs as a result of enactment of the Committee bill is not expected to be significant.

With respect to the home construction firms, the Committee does not believe that the economic impact of applying VA standards to a substantial number of new homes will have a significant impact on such firms because those standards are widely accepted and similar to the Federal, State, and local construction standards with which builders must comply in any event.

C. Determination of the impact on the personal privacy of the individuals affected.

By providing greater opportunities for veterans to avail themselves of VA housing loan and housing loan guaranty programs, the Committee bill will have the effect of greater numbers of veterans providing, to lenders and the VA, the personal financial information necessary for making and guaranteeing housing loans. Such disclosure, however, would be of the type required for the financing of housing purchases (and, frequently, rentals) in any event. Thus, the privacy implications of the Committee bill are not expected to be significant.

D. Determination of the amount of additional paperwork that will result from regulations to be promulgated under the bill.

The additional paperwork that will result from the enactment of the Committee bill would be in the nature of revisions of existing regulations and directives pertaining to the existing programs that the Committee bill would modify and the somewhat increased flow of paperwork resulting from the increased participation by veterans in VA housing loan and housing loan guaranty programs which the

Committee bill would make possible. The amount of such additional paperwork would be significant but essential in light of the greater volume of activity expected in such programs.

Section-by-Section Analysis of H.R. 12028 as Reported

Section 1

Would provide that this act may be cited as the "Veterans' Housing Benefits Improvement Act of 1978."

Section 2

Would amend section 802 of title 38, United States Code, relating to assistance furnished for specially adapted housing for certain severely disabled veterans, to increase the maximum amount of a specially adapted housing grant from $25,000 to $30,000.

Section 3

Clause (1) of section 3 would amend subsection (a) of section 1802 of title 38, relating to the basic entitlement to housing loan guaranties and direct housing loans under chapter 37 of title 38 on the part of World War II and Korean-conflict veterans with 90 or more days of active service, by extending entitlement to Vietnam-era veterans on the same basis. Under existing section 1818 of title 38, Vietnam-era veterans generally must have 181 or more days of active service to be eligible for such loan guaranties and loans. Thus, the effect of this amendment is to extend eligibility to Vietnam-era veterans who served for at least 90 days but less than 181 days.

Clause (2) of section 3 would make technical corrections in the structure of existing subsection (b) of section 1802 to clarify its intent.

Clause (1) of section 4 would amend paragraph (1) of subsection (a) of section 1803 of title 38, relating to the maximum percentage (currently 60 percent) which the United States may guarantee of a housing loan made to an eligible veteran under chapter 37, by deleting the current limiting description of loan-guaranty eligibles—"World War II or Korean-conflict veterans"—and to substitute a description which covers all veterans eligible for benefits under that chapter to accord with the eligibility change made by the amendment to present section 1802(a) in section 3 of the Committee bill.

Subclause (A) of clause (2) of section 4 would amend paragraph (1) of subsection (c) of section 1803, relating to required terms and conditions of loans guaranteed or insured under chapter 37 and the authority of the Administrator of Veterans' Affairs (in consultation with the Secretary of Housing and Urban Development) to set maximum interest rates for such loans, by redesignating existing paragraph (1) of such subsection (c) as subparagraph (A) of paragraph (1) of such subsection.

Subclause (B) of clause (2) of section 4 would amend subparagraph (A) of section 1803(c)(1) (as redesignated by subclause (A) of clause (23 of this section) to provide for an exception to the maximum rate of interest established under such subparagraph (A), that is, the higher interest rate established under such new subparagraph (B) of section 1803(c)(1), as added by subclause (C) of clause (2) of this section, described infra.

Subclause (C) of clause (2) of section 4 would insert after paragraph (1) of subsection (c) of section 1803 a new subparagraph (B), as follows:

New subparagraph (B) of section 1803(c)(1) would authorize the Administrator, specifically with respect to loans guaranteed or insured under chapter 37 for certain energy-related home improvements, to set a maximum interest rates at a level higher than the maximum rate established under subparagraph (A) of section 1803(c)(1) (as redesignated by clause (2)(A) of this section of the Committee bill) for other loans guaranteed or insured under chapter 37. In setting such higher maximum rate, the Administrator is directed to consult with the Secretary of Housing and Urban Development in order to promote a coordinated national policy on interest rates for federally guaranteed or insured loans for energy-related home improvements.

Section 5

Would amend section 1810 of title 38, relating to certain requirements for the guaranteeing fo loans to eligible veterans under chapter 37 and the maximum of guaranty entitlement, as follows:

Clause (1)(A) of section 5 would amend clause (6) of subsection (a) of section 1810, specifying purposes for which chapter 37 loan guaranties may be made, by removing a restriction in current law that limits guaranties on loans for purchases of units in condominium projects to only those units in new condominium projects or structures specifically built and sold as a condominium. As a result of this amendment, housing loans to eligible veterans for the purchase of units in converted condominium projects or developments would be eligible for chapter 37 guaranties.

Clause (v)(*B*) *of section 5* would further amend section 1810(a) by inserting at the end of such subsection a new clause (7), as follows:

New clause (7) of section 1810(a) would add a new category to the listing of purposes for such loan guaranties: that is, the improvement of the veteran's home by either installation of solar heating, solar heating and cooling, or combined solar heating and cooling, or application of a residential energy conservation measure. This new clause also defines these terms and provides examples of each.

Clause (2) of section 5 would amend subsection (c) of section 1810 by increasing from $17,500 to $25,000, the maximum housing loan guaranty amount under chapter 37.

Section 6

Would make conforming amendments to subsection (d)(2) of section 1811 of title 38, relating to direct VA loans to veterans, by providing for technical adjustments, as follows:

Clause (1) of section 6 would amend subparagraph (A) of such section to make adjustments in the formula for determining entitlement for a direct loan for conventional housing, so as to reflect the increase, made by section 5(2) of the Committee bill, in the maximum housing loan guaranty.

Clause (2) of section 6 would amend subparagraph (B) of such section to make adjustments in the formula for determining entitlement for a direct loan to purchase a mobile home, so as to reflect the substitution, made by section 9 of the Committee bill, of a maximum loan guaranty amount for a dollar maximum loan amount in the mobile home loan guaranty program.

Section 7

Would amend subsection (a) of section 1816 of title 38, relating to the procedures applicable when a veteran with a guaranteed loan defaults in the payment of such loan, to require the VA, before allowing the holder of the obligation to proceed to foreclosure, to investigate the desirability of exercising the existing statutory authority to pay the balance of the obligation and then taking an assignment of the obligation from the holder of the obligation.

Section 8

Subsection (a) of section 8 would make conforming amendments to section 1818 of title 38, relating to the chapter 37 eligibility of veterans who serve after January 31, 1955, and generally requiring more than 180 days of active service, by removing coverage under this provision of veterans who served during the Vietnam era. Under the amendment to existing section 1802(a) made by section 3 of the Committee bill, veterans with service during the Vietnam era would be made eligible for chapter 37 benefits on the same basis (generally 90 days of active service) as World War II and Korean-conflict veterans) as follows:

Clause (1) of subsection (a) would amend subsection (a) of section 1818, relating to the eligibility for chapter 37 benefits of veterans who served after January 31, 1955, by excluding from the coverage of existing section 1818 those veterans whose active service includes any service during the Vietnam era (August 5, 1964, to May 7, 1975).

Clause (2) of subsection (a) would amend clause (3) of subsection (a) of section 1818 so as to reflect the exclusion provided for in the amendment made by clause (1) of this subsection.

Clause (3) of subsection (a) would amend the language in subsection (a) of section 1818 following clause (3) thereof by including a reference to section 1802(a) of title 38, together with section 1818, as a provision governing the chapter 37 eligibility of veterans whose active service includes service after January 31, 1955, and prior to August 5, 1964, or after May 7, 1975. Section 1802(a), as it would be amended by section 3 of the bill, governs entitlement under chapter 37 when a veteran has served in more than one period on which such entitlement may be based.

Clause (4) of subsection (a) would repeal subsection (b) of section 1818 and redesignate subsection (c) thereof as subsection (b). The subsection which would be repealed governs chapter 37 entitlement of veterans whose active service included both service after January 31, 1955, and service during an earlier period (World War II or the Korean conflict) which resulted in chapter 37 entitlement.

Clause (5) of subsection (a) would amend the catchline of section 1818 so as to reflect the amendments made to that section.

Subsection (b) of section 8 would amend the table of sections at the beginning of chapter 37 so as to reflect the amendments which would be made by subsection (a)(5) of this section to the catchline of section 1818.

Section 9

Would amend section 1819 of title 38, relating to direct loans and guaranties of loans to veterans for the purchase of mobile homes and mobile home lots, by restructuring the VA mobile home loan program in a number of ways, as follows:

Clause (1) of section 9 would amend subsections (a) and (b) of section 1819 to clarify the purposes for which loans may be guaranteed

under section 1819, so as generally to preclude the use of remaining entitlement for the purchase of a second mobile home while the veteran still has a mobile home purchased with assistance under section 1819, and to change the conditions under which restoration of entitlement occurs.

Subsection (a) as so amended (consisting of three paragraphs) of section 1819 would list, in paragraph (1), the five purposes for which a guaranteed loan may be made to an eligible veteran: (A) the purchase of a lot on which to place a mobile home already owned by the veteran; (B) the purchase of a new or used single-wide mobile home; (C) the purchase of a new or used single-wide mobile home together with a lot on which to place it; (D) the purchase of a new or used double-wide mobile home; or (E) the purchase of a new or used double-wide home together with a lot on which to place it. These purposes are, under current law, stated in subsections (a) and (b) of existing section 1819. The amended subsection (a) of section 1819 would also provide, in paragraph (2), that any loan for any of these five purposes may also contain an appropriate amount to prepare the lot on which the mobile home is to be placed. Similar provisions are, under current law, contained in paragraphs (1) and (2) of subsection (b) of existing section 1819. In addition, the amended subsection (a) of section 1819 would specify, in paragraph (3), that any loan made for the combined purchase of a mobile home and a lot on which to place it shall be considered as part of one loan, but that the transaction may be evidenced by either a single loan instrument or separate loan instruments for the purchase of the mobile home and for the purchase (and preparation) of the lot.

Subsection (b) (as so amended) (consisting of two paragraphs) would provide, in paragraph (1), that use of entitlement under section 1819 shall preclude the use of remaining entitlement for the purchase of an additional mobile home until the veteran has disposed of the first unit or it has been destroyed by fire or other natural hazard. There is no comparable provision in current law. The amended subsection (b) would also provide, in paragraph (2), for restoration of chapter 37 eligibility, after the use of entitlement to purchase a mobile home, on the same basis as is currently provided for in existing section 1802(b) of title 38 for restoration of entitlement after the use of entitlement to purchase a conventional home. Thus, after using entitlement to purchase a mobile home, a veteran generally would have chapter 37 entitlement restored if (1)(A) the property that secured the loan has been disposed of by the veteran or destroyed by fire or other natural hazard, and (B) the loan has been paid in full or the Administrator has been released from liability as to the loan, or, if the Administrator has suffered a loss on such loan, the loss has been paid in full or (2) an eligible veteran transferee assumed the loan and substituted his or her entitlement for the original veteran's, the transferor's, entitlement. Under current law, use of a mobile home loan guaranty entitlement under existing section 1819 precludes the use of housing loan guaranty entitlement under any other section of chapter 37 until the section 1819 guaranteed loan has been paid in full (existing section 1819(a)); and the mobile home loan guaranty entitlement under section 1819 may be restored only once after the first guaranteed loan has been repaid in full (existing section 1819(g)).

Clause (3) of section 9 would amend subsection (c) of section 1819 by deleting language made unnecessary by other amendments made by the Committee bill, and by revising provisions relating to the scope of loan guaranty under section 1819 and to the use of such entitlement after use of chapter 37 entitlement for the purchase of a conventional home, as follows:

Subclause (A) of clause (2) would amend paragraph (1) of subsection (c) of section 1819 by deleting language regarding the purposes of guaranteed loans which is redundant in light of the amendments to subsection 1819(a) which would be made by clause (1) of this section of the Committee bill.

Subclause (B) of clause (2) would amend paragraph (3) of subsection (c) of section 1819 by providing that the maximum mobile-home-loan guaranty shall be $17,500 or 50 percent of the loan amount, whichever is the lesser. Under current law, the maximum guaranty may not exceed 50 percent of the loan (section 1819c)); and maximum limits are placed on loans which may be guaranteed, as follows:

Single-wide mobile home-----	$12,500 (plus appropriate additional amount to cover necessary site preparation of already owned lot).
Double-wide mobile home----	$20,000 (plus appropriate additional amount to cover necessary site preparation of already owned lot).
Single-wide mobile home and undeveloped lot.	$20,000 ($12,500 maximum for the mobile home, plus additional appropriate amount to cover necessary site preparation).
Double-wide mobile home and undeveloped lot.	$27,500 ($20,000 maximum for the mobile home, plus additional appropriate amount to cover necessary site preparation).
Single-wide mobile home and suitably developed lot.	$20,000 ($12,500 maximum for the mobile home).
Double-wide mobile home and suitably developed lot.	$27,500 ($20,000 maximum for the mobile home).
Undeveloped lot----------	$7,500 (includes amount to cover necessary site preparation).
Suitably developed lot--------	$7,500.

Thus, the amendment would modify current law so that the structure of the loan guaranty program for any of the section 1819 purposes would become the same as that for conventional housing loans: that is, a guaranty of a percentage of the loan (up to 50 percent for section 1819 purposes) up to a maximum amount of such guaranty ($17,500 for section 1819 purposes), and would differ from the conventional housing loan guaranty in the maximum percentage amount of the guaranty (60 percent under existing section 1803, which the Committee bill would not alter) and the maximum amount of such guaranty ($25,000 as would be provided for under amendments made by section 5(2) of the Committee bill).

Subclause (C) of clause (2) would amend subsection (c) of section 1819 by adding a new paragraph (4), as follows:

New paragraph (4) of section 1819 would provide that the maximum entitlement available to be used under section 1819 shall not exceed $17,500; and that the use of chapter 37 entitlement under section 1810 (guaranty) or 1811 (direct loan) for the purchase of conventional housing shall reduce entitlement under section 1819 for the

purchase of a mobile home to the same extent that entitlement under section 1810 is reduced to less than $17,500. Under current law (section 1819(a)), a veteran would have to have the maximum home loan guaranty available to qualify for a mobile-home-loan guaranty.

Clause (3) of section 9 would amend subsection (d) of section 1819 by deleting (in conformity with the amendment made by subclause (B) of clause (2) of this section of the Committee bill) all language establishing and relating to the establishment of maximum loans which may be guaranteed, and by increasing by 3 years—from 12 years and 32 days to 15 years and 32 days—the maximum term of years of guaranteed loans for the purchase of a lot alone and for the purchase of a single-wide mobile home and a lot.

Clause (4) of section 9 would amend clause (4) of subsection (e) of section 1819 by deleting (in conformity with the amendments made by clause (3) of this section of the Committee bill deleting from subsection (d) of existing section 1819 the maximum amounts of guaranteed loans) the reference to the maximum limits specified in subsection (d) of existing section 1819 on guaranteed loans; and by clarifying that the amount of the guaranteed loan may not exceed an amount determined to be reasonable and specifying the elements of the determination of reasonableness, as follows: (A) for the portion of a loan to purchase a new mobile home, such cost factors as the Administrator considers proper to take into account; (B) for the portion of a loan to purchase a used mobile home, the reasonable value of the property as determined by the Administrator; (C) for the portion of the loan to purchase a lot, the reasonable value of the lots as determined by the Administrator; and (D) for the portion of a loan to cover necessary preparation of the site where the mobile home will be placed, an appropriate amount as determined by the Administrator.

Clause (5) of section 9 would amend section 1819 by repealing existing subsection (g) in its entirety. The subsection to be deleted limits restoration of entitlement under section 1819 to a single restoration following full repayment of the loan. The amendments made by clause (1) of this section of the Committee bill provide a new basis for restoration.

Clause (6) of section 9 would make the redesignation of the remaining subsections in section 1819 made necessary by the repealer in clause (5) of this section of the Committee bill.

Clause (7) of section 9 would amend subsection (h) of section 1819 (as redesignated by clause (6) of this section, relating to the Administrator's inspections of the mobile-home manufacturing process and conduct of random onsite inspections. The amendments would authorize the Administrator to delegate to the Secretary of Housing and Urban Development the responsibility for inspection of the manufacturing process of mobile homes to be sold to veterans using VA assistance under chapter 37, subject to the following conditions: (1) acceptance of the delegation by the Secretary of Housing and Urban Development, (2) a requirement that the VA promptly be provided the results of the inspections, and (3) the right of the Administrator at any time to withdraw the delegation, fully or partially. The amendments made by this clause would also require, in connection with VA random onsite inspections of mobile homes purchased by veterans with assistance under chapter 37, the monitoring of safety factors involved in the installation of such homes.

Clause (8) of section 9 would amend subsections (i), (j), and (l) of section 1819 (as redesignated by clause (6) of the section) so as to reflect the redesignation of subsection (i) thereof as subsection (h), as would be made by clause (6) of this section of the Committee bill.

Clause (9) of section 9 would amend subsection (l) of section 1819 (as redesignated by clause (g) of this section) so as to reflect the redesignation of subsection (j) thereof as subsection (i) thereof, as would be made by clause (6) of this section of the Committee bill.

Section 10

Would amend section 906 of title 38, United States Code, relating to VA-supplied headstones and markers, by adding a new subsection (c) at the end thereof, as follows:

New subsection (c) of section 906 would provide that such VA-supplied headstones and markers may be made of any material, including but not limited to marble, granite, bronze, or slate, if the material which is requested by the person entitled to make such request is determined by the Administrator to be cost effective and, when the headstone is to be placed in a national cemetery, esthetically compatible with the cemetery area. Under current law, there are no standards for VA selection of material for such headstones and markers and, as a matter of practice, the VA supplies only marble, granite, or bronze headstones or markers.

Section 11

Would clarify that none of the provisions of the Committee bill, other than the amendments to title 38, United States Code, providing for new spending authority as defined in section 401(c)(2)(C) of the Congressional Budget Act of 1974 (Public Law 93-344), shall be deemed to authorize, either directly or indirectly, the enactment of new budget authority.

Section 12

Would provide that the amendments made by the act shall be effective October 1, 1978.

Record of Votes Cast in Committee

Pursuant to section 133(b) of the Legislative Reorganization Act of 1946, as amended, announcement is made that the Members of the Committee on Veterans' Affairs, on July 27, 1978, voted, 9 to 0, in favor of a motion to report H.R. 12028, as amended, favorably to the Senate at follows:

YEAS—9	NAYS—0
Alan Cranston	
Herman E. Talmadge	
Jennings Randolph	
Richard (Dick) Stone	
John A. Durkin	
Spark M. Matsunaga	
Robert T. Stafford	
Strom Thurmond	
Clifford P. Hansen	

Agency Reports

In lieu of the report on H.R. 12028 from the Veterans' Administration, excerpted portions of the testimony of Dorothy Starbuck, Chief Benefits Director, Veterans' Administration, appearing before the Subcommittee on Housing, Insurance, and Cemeteries on June 15, 1978, will be used to express the views of that agency on the issues in H.R. 12028. The statement follows:

Statement of Dorothy L. Starbuck, Chief Benefits Director

Mr. Chairman and members of the subcommittee, I am pleased to have the opportunity to appear before the subcommittee this morning to discuss various matters pertaining to the VA Housing and Burial Benefit Programs. I will begin my statement by discussing the current status of the GI home loan program, and will follow with remarks on legislation now pending before the subcommittee pertaining to our Housing Programs. I will conclude by discussing certain bills relating to Veterans' Burial Benefits.

* * * * * * *

Mr. Chairman, I would like to discuss some of the conclusions and recommendations which are contained in the VA Housing Solar Energy and Weatherization Study. In this regard I must point out that further study will be necessary. In addition, we believe that any legislative action in this area, as applied to veterans, should await resolution of issues in the energy bill which is pending in the Congress and coordination between VA, DOE, HUD, Agriculture and other concerned departments and agencies so we can have a coherent national policy applying to all citizens, including veterans.

In this regard, we note that a bill, H.R. 12437, has been introduced in the House of Representatives to create a new program for VA to make direct loans to veterans for the reasonable costs of installing solar energy systems in new or existing homes. Veterans installing such systems in existing homes would also be permitted to use a portion of the proceeds of such loans for other energy conservation measures. Loans under the bill would be limited to $5,000 and a maximum term of 15 years and 32 days. In view of the general philosophy we have just expressed, and since we understand H.R. 12437 may be inconsistent with the provisions of title I of the National Energy Act as reported by the conference committee, we reported unfavorably on H.R. 12437 to the Chairman, House Committee on Veterans' Affairs on June 9, 1978.

Pending more comprehensive legislation and executive coordination, the VA may, under current law, guarantee or make loans to purchase, construct, refinance or to repair and improve homes for eligible veterans. Within the scope of this law, such loans may include amounts for installation of solar energy systems and also such other energy conservation devices and measures as may be appropriate. However, it should be noted that there has been very little interest on the part of veterans in obtaining GI loans for this purpose. The following are matters discussed in the report which we feel should be explored further before any legislation pertaining to the VA housing programs is considered:

Many veterans who have used their VA home loan entitlement may now have homes that could be improved with energy saving

features, but without additional entitlement for such purposes, could not utilize VA assistance. Separate entitlements for such purposes could be in the form of a certain guaranty amount entitlement as proposed in H.R. 8701, or a specific loan amount maximum, which our review indicated may be more workable.

However, VA will undertake to encourage those veterans who have remaining entitlement and who have homes that could be improved with energy saving features to apply for these benefits for such purposes.

Authorize supervised and VA-approved nonsupervised lenders to close home improvement loans for energy conservation purposes—on the "automatic" basis up to a certain maximum amount and term which would be consistent with established industry practices. Due to the absence of a secondary market for home improvement loans, mortage companies, who are the primary source of VA home loans, are generally precluded from offering home improvement financing. It thus would seem necessary to direct a potentially viable home improvement program toward participation by commercial banks and other types of supervised lenders who intend to retain such loans in their own portfolio. Such simplication of processing procedures could enhance the attractiveness of the program and do much toward promotion of lender participation.

In this regard we are reviewing our present prior approval requirements for home improvement loans with the view toward making the appropriate modifications to encourage supervised and VA approved nonsupervised lenders to make energy improvement loans to eligible veterans.

An option by such lenders as to either 60 percent guaranty coverage on each loan made, or insurance under section 1815 of Title 38, U.S.C. Under the insurance program authorized by section 1815 of title 38, U.S.C., the risk protection for the initial loans made is very limited, but as the lender's insurance "reserve" accrues, the lender can eventually be reimbursed for up to 100 percent of its net loss on a loan. While such insurance coverage may be desirable to lenders who intend to make many home improvement loans, lenders intending to participate in the program on a limited basis may prefer to obtain immediate guaranteed risk protection at a rate of 60 percent of each loan made.

Permit a minimal lien requirement, limited to that which is legally enforceable and customary in the community. For loans of a certain lesser amount, it may be that no lien should be required. Many veteran homeowners wishing to obtain home improvement financing presently have first or other liens against the property to be improved. Therefore, the lien required to secure the home improvement loan would have to be minimal: that is, limited to that which is legally enforceable and customary in the community.

We are reviewing the lien requirements and related loan amounts with respect to VA loans for alteration, repair and improvements, within present statutory authority, to determine if administrative changes could be made which would enhance participation in such loans.

A need for a method of establishing the reasonable value of solar and other energy conserving improvement for which value has not been determined in the market place and which is acceptable in the light of established lending practices. A problem exists because solar systems generally are new to the market and market data may be in short supply or nonexistent. Also there is a need to explore the extent of protection afforded the homeowner and the lender by hazard insurance coverage on solar systems and the increased cost of the coverage as it may affect value and loan underwriting. As an interim measure VA has begun establishing the value of a solar energy system as the amount that can be demonstrated by an analysis of the market.

Specific discretionary authority for the Administrator to set the maximum interest rate for such loans as is necessary to assure a reasonable supply of home improvement financing for veterans, since such loans generally carry a greater interest rate than do loans for the purchase of homes.

Permit eligible veterans to obtain more than one improvement loan within a loan maximum. After obtaining one VA home improvement loan, the veteran may desire to make additional improvements or install other energy conserving features as they become available or affordable. The program should not be unduly restrictive in this respect but should permit eligible veterans to obtain more than one improvement loan within a loan maximum. In this way, energy conservation improvements could be made in appropriate stages. For example, a veteran may wish to install additional insulation, storm doors and windows and later install a solar hot water system.

We found that a need may exist to provide a means whereby lenders would be induced to make loans to veterans to simultaneously purchase and improve existing homes by adding solar energy systems and making other energy conservation and weatherization improvements. DOE is currently demonstrating such a proposal in several lending areas in cooperation with several private lenders and the National Energy Act may contain a similar proposal for solar energy.

Under such a program, veterans would be encouraged to include in the original principal amount of an acquisition loan the cost of such improvements. By amortizing the cost of the improvements over the full term of the loan at the lesser interest rate chargeable for such loans, the impact on the veteran's financial resources would be substantially reduced. For example, a lender presently making a $40,000 acquisition loan to a veteran with full entitlement of $17,500 would receive guaranty coverage of 43.75 percent, while again at present a loan to purchase the same property and make improvements costing $8,000 for a total of $48,000 would only be guaranteed at a rate of 36.46 percent because of the $17,500 maximum guaranty. To correct this, the 43.75 percent coverage should be extended to the larger loan amount. We believe this would be acceptable to the secondary market and that it could be very effective in promoting the addition of energy conserving features to existing homes purchased with VA financing.

As an administrative measure to induce lenders to participate in such a program, we are reviewing a procedure whereby guaranty would be issued to the lender at the time the entire loan is closed, with modified escrow procedures to assure completion of the improvements, which could improve procedures as to lender operations.

Mr. Chairman, if after further exploration of the foregoing items, should they prove to be desirable, implementing legislation would of course be required for certain of the items.

* * * * * * *

I want to assure the Committee that we are reviewing all aspects of the home improvement loan procedures with the view to making such modifications deemed appropriate to permit veterans to utilize that loan benefit to the maximum degree possible.

I believe it appropriate, before leaving this subject, to point out that VA financing for home improvements, including solar energy devices, is not the only source available to veterans. For example, FHA title I financing is available to all members of the public. In addition, many retailers have arrangements for consumer installment financing to aid in the sale of their products. We also understand that in the energy bill pending before the Congress there are other financing provisions.

Mr. Chairman, I will now discuss the bills under consideration today. First, I will discuss the proposal to eliminate the requirement that the Administrator of Veterans' Affairs conduct inspections of the mobile home manufacturing process. One bill which would accomplish this objective is S. 1643. Also pending before this Committee is H.R. 4341, which passed the House of Representatives September 12, 1977. That bill is identical to S. 1643.

In addition, Mr. Chairman, H.R. 12028, the omnibus "Veterans' Housing Improvements Act of 1978," which was ordered reported by the Committee on Veterans' Affairs, House of Representatives on April 20, 1978, would, among other things, eliminate the mobile home inspection requirement.

Section 1819 of title 38, United States Code, which was enacted as part of the Veterans' Housing Act of 1970, authorizes the Administrator of Veterans' Affairs to guarantee loans made to veterans for the purchase of mobile homes.

In granting this authority to the Administrator, the Congress required, in subsection (i), that mobile home units purchased with the assistance of VA guaranteed loans meet or exceed standards for planning, construction, and general acceptability to be prescribed by the Administrator.

Subsection (i) further provides that "For the purpose of assuring compliance with such standards, the Administrator shall from time to time inspect the manufacturing process of mobile homes to be sold to veterans and conduct random onsite inspections of mobile homes purchased with the assistance under this chapter."

On August 22, 1974, the National Mobile Home Construction and Safety Standards Act of 1974 (Title VI of Public Law 93-383) was enacted. Under section 604 of that act, the Secretary of Housing and Urban Development is directed to establish Federal mobile home construction and safety standards. Section 610 of the act prohibits the sale in interstate commerce of new mobile units that do not conform to

these standards. The act further provides, in section 614, for the Secretary to conduct inspections necessary to enforce such standards.

The Veterans' Administration has adopted the standards issued by the Secretary for purposes of section 1819(i) of title 38, United States Code. We believe the inspections conducted by the Department of Housing and Urban Development, under section 614 of the National Mobile Home Construction and Safety Standards Act of 1974, will be sufficient to insure that new mobile homes sold to veterans will be properly manufactured. We believe requiring VA personnel to conduct additional plant inspections would amount to a duplication of effort without tangible benefit to veterans.

Concerning onsite inspections of mobile homes, Mr. Chairman, the Department of Housing and Urban Development does not conduct comparable examinations. We interpret the legislative history of the mobile home program as revealing a twofold purpose for VA onsite inspections of mobile homes. This was to insure that veterans received quality products, and to evaluate the program in order for the VA to provide data to the Congress on whether the mobile home program, which was originally scheduled to terminate July 1, 1975, should be continued beyond that date.

The Veterans' Administration believes that the National Mobile Home Construction and Safety Standards Act of 1974 will insure that veterans receive mobile homes of a sufficient high quality.

In 1974, the Congress indicated its belief that the value of the mobile home program had been established by repealing the termination date for that program when it enacted Public Law 93–569.

We, therefore, believe onsite inspections no longer serve a useful purpose.

Mr. Chairman, in discussion of this measure with your Committee staff last year, a question was raised as to whether the Administrator may prescribe standards for mobile homes, which are purchased with GI loans, that are different from the standards established by the Secretary of Housing and Urban Development. The Office of General Counsel studied this matter, and issued an opinion which was forwarded to your attention. In summary, the General Counsel concluded that, under the 1974 enactment, the HUD standards are supposed to "be reasonable and . . . meet the highest standards of protection." But, as reasonable minds can differ, it is possible that the Administrator might believe that a particular standard issued by HUD does not adequately protect veterans. Should that occur, the Administrator retains his authority under section 1819(i) to prescribe a standard for mobile homes purchased with a VA guaranteed loan which might be different from the HUD standard.

As a practical matter, Mr. Chairman, we believe such an event occurring to be extremely unlikely. In the unlikely event it became necessary for VA to issue a separate mobile home standard, we believe the general powers of the Administrator to carry out the laws administered by VA are broad enough for this agency to devise a method of assuring compliance with the VA mobile home standard. We do not believe, however, that the mere possibility that some day the Administrator might find it necessary to issue a standard which might be different from the Federal Mobile Home Construction and Safety Standard issued by HUD justifies VA maintaining the comprehensive

and costly inspection system now mandated by subsection (i) of section 1819.

Accordingly, Mr. Chairman, the Veterans' Administration favors enactment of S. 1643, or the companion bill H.R. 4341, if the more comprehensive bill H.R. 12028 does not receive prompt, favorable consideration.

I will now discuss omnibus measure H.R. 12028, which was ordered reported by the Committee on Veterans Affairs, House of Representatives on April 20, 1978. This measure, entitled the "Veterans' Housing Improvements Act of 1978" would make the following amendments to the VA housing assistance programs:

Increase the maximum specially adapted housing grant to $30,000;

Increase the maximum VA loan guaranty to $25,000;

Reduce, to 90 days, the minimum amount of active duty required of Vietnam era veterans in order to qualify for VA home loan benefits;

Restructure the VA mobile home loan program in a way which more closely parallels the VA loan program for conventionally built houses, and rewrite certain provisions of section 1819 of title 38, United States Code, which establishes the mobile home loan program, to provide that section with a more orderly format.

Turning to the specific provisions of H.R. 12028, I will first discuss the provision dealing with VA's specially adapted housing program. If enacted, the bill would increase fro $25,000 to $30,000 the maximum grant VA could make pursuant to chapter 21 of title 38, United States Code to certain disabled veterans to assist them in acquiring suitable housing units specially adapted to the nature of their disabilities.

Mr. Chairman, at this time, we think, it would be helpful to provide some background information on the evolution of the maximum amount of specially adapted housing grants, to the current limit of $25,000. Public Law 80–702, enacted in 1948, initially set the maximum grant for specially adapted housing at $10,000. As housing costs have risen steadily since then, the maximum was increased to $12,500 in 1969 (Public Law 91–22); to $17,500 in 1972 (Public Law 92–341); and to the present $25,000 in 1974 (Public Law 93–569). In fiscal year 1973, the average total cost to a veteran for a new, specially adapted house was $45,155 and $48,510 in fiscal year 1974. In July 1974, this average was $53,000. The average cost rose to $66,626 in fiscal year 1977. We anticipate these costs will continue to increase.

The specially adapted housing grant is limited to a maximum of 50 percent of the total cost of the house. It should be pointed out that the grant is not limited to the purchase of special adapted equipment but is applied to the total cost to the veteran of the housing unit and the land. Veterans may use their VA guaranteed or direct loan entitlement if eligible, or obtain conventional financing, to obtain the remainder of the money necessary to purchase or construct their homes.

Mr. Chairman, the Veterans' Administration has always sought to meet the needs of disabled veterans. We believe the specially adapted housing program has met a basic need of a particularly worthy class of individuals who have been severely disabled in their Nation's service. In view of the escalating costs of housing, we believe increasing the maximum specially adapted housing grant is warranted so that

the majority of veterans eligible for this benefit will be able to obtain a grant which will cover the full 50 percent of the cost of acquiring a housing unit, as is envisioned by chapter 21 of title 38, United States Code.

We anticipate that enactment of this measure would result in increased costs to the Veterans' Administration of approximately $4.4 million in fiscal year 1979, and a 5-year increase in cost of approximately $19 million.

H.R. 12028 would also increase VA's maximum home loan guaranty from $17,500 to $25,000.

Before turning to the merits of this proposal, Mr. Chairman, I would like to make a few remarks on how the VA guaranty works, and how larger loans are affected by the maximum guaranty amount.

The Veterans' Administration loan guaranty program operates by substituting the guaranty of the Federal Government for the investment protection afforded, under conventional mortgage terms, by substantial downpayment requirements and relatively shorter terms of loans. Thus, eligible veterans are able to finance home purchases even though they may not have the resources to qualify for conventional loans. Under present law, homes loans may be guaranteed up to 60 percent of the amount of the loan, but not to exceed $17,500. Therefore, Mr. Chairman, only loans which do not exceed $29,166 are guaranteed for the full 60 percent of the loan amount. Loans over the amount are guaranteed for whatever percentage the maximum guaranty (which, under present law, is $17,500) is to the original loan amount. For example, Mr. Chairman, a $70,000 loan would carry a 25 percent guaranty, as $17,500 is one-fourth or 25 percent of $70,000. All loans for $29,166 or more carry an initial maximum guaranty of $17,500.

Under the basic law (section 1803(b) to title 38, United States Code), however, the Administrator's liability decreases, prorata, as the loan is repaid. Thus, on a loan for $29,166, which carries the maximum 60 percent guaranty, when the loan balance is reduced to $25,000, the guaranty would be 60 percent of this unpaid balance, or $15,000. In the case of a $70,000 loan, which, as I noted a few moments ago, Mr. Chairman, carries a 25 percent guaranty, when the loan balance is reduced to $60,000, the Administrator's liability would also be $15,000, which is 25 percent of $60,000.

If, Mr. Chairman, the maximum guaranty is increased to $25,000, as proposed by H.R. 12028, loans of up to $41,667 will be provided a guaranty of 60 percent of the loan amount. Loans above that amount would, as at present, carry a smaller percentage of guaranty. Since, however, $25,000 instead of $17,500 would be used to determine the percentage of guaranty, lenders would receive greater protection on loans of a given size. For example, a $70,000 loan would carry a 35.71 percent guaranty rather than 25 percent. VA's liability will continue to decrease prorata as the loan is repaid. Therefore, in the example I cited previously (a loan with an original principal of $70,000, and an outstanding balance of $60,000), the Administrator's maximum liability would be 35.71 percent of this balance, or $21,426, as opposed to $15,000 under the current law. Accordingly, Mr. Chairman, enactment of H.R. 12028 would assure a greater degree of protection on loans over $29,166, and thereby encourage continuing participation of

lenders in the program. This, of course, benefits veterans since it makes more mortgage funds available, making it easier for veterans to obtain GI home loans.

The amount of the guaranty was increased from $12,500 to the present $17,500 by the Veterans' Housing Act of 1974, which was enacted December 31, 1974.

Mr. Chairman, as a result of the increases which have occurred in the price of homes and, therefore, in the amount of loans guaranteed by VA, since 1974, the present $17,500 guaranty does not afford adequate protection in the eyes of many lenders. In Fiscal Year 1977, the average GI loan was approximately $34,500. For the first half of Fiscal Year 1978, the average loan amount was $38,016. Thus, lenders are currently being provided an average guaranty of 42.2 percent, a drop of more than 3 percent from the 45.3 percent coverage provided in Fiscal Year 1977. This, Mr. Chairman, is the lowest percentage of guaranty provided since Fiscal Year 1968.

Mr. Chairman, increasing the maximum guaranty would not result in any increase in the Veterans Administrations' general operating expenses. We estimate, however, that this measure would necessitate total 5-year increased outlays from the Loan Guaranty Revolving Fund of $4,822,000.

In addition, H.R. 12028 would amend title 38, United States Code, to liberalize the eligibility requirements for home, condominimum and mobile home loans for veterans of the Vietnam era.

Under the current law, Mr. Chairman, veterans of World War II and the Korean conflict, who have been discharged under conditions other than dishonorable, are eligible for VA home loan benefits provided the veteran's total active service is for 90 days or more. Veterans who have served after July 25, 1947, and prior to June 27, 1950, are classified as veterans with peacetime service and must have served for a period of more than 180 days. Also, under the current law, veterans with service after January 31, 1955, the end of the Korean conflict, must have served for a period of more than 180 days. This places veterans of the Vietnam era in the same category as veterans with peacetime service. H.R. 12028 would make the more liberal 90-day eligibility criteria for home loan benefits, which now apply to World War II and Korean conflict veterans, also apply to veterans of the Vietnam era.

For purposes of veterans benefits, the Vietnam era is a period of war. We, therefore, believe it would be consistent and equitable to apply the same standard for the home loan eligibility to Vietnam era veterans as applies to World War II and Korean conflict veterans. The Veteran's Administration believes the intent of this portion of H.R. 12028 is most appropriate.

I have attached to the printed text of my statement a chart showing the minimum number of days of full-time active duty which would have to have been served in order to qualify for GI loan benefits for each period of eligibility, if H.R. 12028 were enacted. With your permission, Mr. Chairman, I request that the chart be inserted at this point in the record. As you may note, 90 days would be required for the period of World War II, the Korean conflict, and the Vietnam era. In all other periods, more than 180 days would be the minimum.

We estimate that enactment of this measure would grant home loan eligibility to approximately 168,000 additional Vietnam era veterans,

with an additional 5-year outlay of approximately $1,788,000, with all but $164,000 of general operating expenses coming from our revolving funds. Eligibility of those veterans presently entitled to home loan benefits would not be affected by H.R. 10356. Also, the bill would not alter the present rule that no minimum service is required for veterans who have been discharged or released from active duty for a service-connected disability.

Finally, Mr. Chairman, H.R. 12028 would make a number of amendments to section 1819 of title 38 (and a perfecting change to section 1811 to that title) which are intended to improve the Veterans' Administration mobile home loan program.

Basically, these amendments are designed to structure the VA's mobile home loan program in a way which closely parallels that for conventionally built homes and to make certain technical changes which would provide section 1819 of title 38, United States Code, with a more orderly format.

H.R. 12028 would eliminate the provisions currently in section 1819 (d) (2) of title 38 which set maximum amounts for mobile home loans. At present, the size of a VA guaranteed mobile home loan is limited to $12,500 if the veteran is purchasing a single-wide mobile home, $20,000 for a single-wide mobile home and a suitable lot, $20,000 for a double-wide mobile home, and $27,500 for a double-wide mobile home and a suitable lot.

In contrast, Mr. Chairman, there is no limit on the size of a VA guaranteed loan a veteran may obtain to purchase a conventionally built home, provided the amount the veteran borrows does not exceed the reasonable value of the property being purchased, and the veteran can qualify for the loan from a credit standpoint.

Mr. Chairman, it was recognized at the outset of the GI loan program that most veterans, especially the young and recently discharged veterans needing a home, had not had the opportunity to save the money necessary for the downpayment required to acquire a home with conventional financing. The VA guaranty was intended as a substitute for the downpayment ordinarily required by lenders. As a result, many veterans have been able to purchase homes with no downpayment. This concept has worked very well for over 30 years.

VA Regulations permit veterans to obtain no downpayment mobile home loans, provided the purchase price of the home and lot, if any, do not exceed the maximum loan amounts. Rising costs of production, materials, and labor have increased the prices of many mobile homes to well beyond the statutory maximums established in today's law, and thereby deny veterans the opportunity to acquire mobile homes without paying substantial downpayments. Removal of the statutory loan maximums would permit many veterans to purchase the mobile homes of their choice with the help of a 100 percent GI loan. We, therefore, support the removal of the current statutory maximums.

The mobile home guaranty would remain at 50 percent. The bill, however, would set a maximum mobile home guaranty amount of $17,500. This provision is necessary to limit the amount of the VA's liability on the guaranty since the loan maximums would be removed.

The mobile home loan guaranty would, therefore, work in the same manner as with other VA guaranteed loans, as I explained earlier in connection with my discussion of the provision of this bill which

would increase the home loan guaranty. As I stated previously, this concept has worked very well for over 30 years.

H.R. 12028 will also increase the maximum term of years for which loans are financed for 12 years and 32 days to 15 years and 32 days in the case of a loan for the purchase of single-wide mobile home only or for the purchase of a lot. The purpose of this proposed amendment is to assist lower income veterans, particularly veterans of the Vietnam era, to purchase single-wide mobile homes at a lower monthly cost. To veterans in the lower income brackets, a decrease in the monthly payment of only a few dollars per month can be of great assistance. The Veterans' Administration favors this provision of the bill.

In addition, Mr. Chairman, H.R. 12028 would make several changes with regard to a veteran's entitlement to mobile home loan benefits. The bill imposes the same criteria for restoration of entitlement which are now applied to loans for conventionally built homes, i.e., the home must be disposed of and the loan must be paid in full. All veterans who obtained any kind of home loan would, therefore, be treated equally. In light of the growth in the manufactured housing market and the rising cost of conventionally built housing, greater flexibility of the entitlement usage will enable more veterans to become howeowners.

Additionally, the bill provides that a veteran who obtains a loan under section 1819 will have the opportunity to use his or her partial or remaining entitlement.

In summary Mr. Chairman, H.R. 12028 would accomplish several major objectives. The mobile home program would become more flexible by having no dollar limitations on loan amounts; the term for single-wide mobile home loans would be increased; and the use and restoration of entitlement for this program would be liberalized. This program would, therefore, become more viable and attractive to lenders and would increase the availability of loan funds for GI mobile home loans. This should be of particular benefit to lower income veterans, particularly those of the Vietnam era.

We estimate that enactment of the amendments to the VA mobile home loan program contained in H.R. 12028 would cost the VA approximately $56,000 the first year, with 5-year cost estimates of approximately $7,653,700.

For the foregoing reasons, the Veterans' Administration favors enactment of H.R. 12028.

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CHANGES IN EXISTING LAW MADE BY H.R. 12028 AS REPORTED

In accordance with subsection 4 of Rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 38—UNITED STATES CODE

* * * * * * *

PART II—GENERAL BENEFITS

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CHAPTER 21—SPECIALLY ADAPTED HOUSING FOR DISABLED VETERANS

* * * * * * *

§ 802. Limitations on assistance furnished

The assistance authorized by section 801 of this title shall be limited in the case of any veteran to one housing unit, and necessary land therefor, and shall be afforded under one of the following plans, at the option of the veteran but shall not exceed [$25,000] *$30,000* in any one case—

(1) where the veteran elects to construct a housing unit on land to be acquired by him, the Administrator shall pay not to exceed 50 per centum of the total cost to the veteran of (A) the housing unit and (B) the necessary land upon which it is to be situated;

(2) where the veteran elects to construct a housing unit on land acquired by him prior to application for assistance under this chapter, the Administrator shall pay not to exceed the smaller of the following sums: (A) 50 per centum of the total cost to the veteran of the housing unit and the land necessary for such housing unit, or (B) 50 per centum of the cost to the veteran of the housing unit plus the full amount of the unpaid balance, if any, of the cost to the veteran of the land necessary for such housing unit;

(3) where the veteran elects to remodel a dwelling which is not adapted to the requirements of his disability, acquired by him prior to application for assistance under this chapter, the Administrator shall pay not to exceed (A) the cost to the veteran of such remodeling; or (B) 50 per centum of the cost to the veteran of such remodeling; plus the smaller of the following sums: (i) 50 per centum of the cost to the veteran of such dwelling and the necessary land upon which it is situated, or (ii) the full amount of the unpaid balance, if any, of the cost to the veteran of such dwelling and the necessary land upon which it is situated; and

(4) where the veteran has acquired a suitable housing unit, the Administrator shall pay not to exceed the smaller of the following sums: (A) 50 per centum of the cost to the veteran of such hous-

ing unit and the necessary land upon which it is situated, or (B) the full amount of the unpaid balance, if any, of the cost to the veteran of such housing unit and the necessary land upon which it is situated.

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CHAPTER 23—BURIAL BENEFITS

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§ 906. Headstones and markers

(a) The Administrator shall furnish, when requested, appropriate Government headstones or markers at the expense of the United States for the unmarked graves of the following:

(1) Any individual buried in a national cemetery or in a post cemetery.

(2) Any individual eligible for burial in a national cemetery (but not buried there), except for those persons or classes of persons enumerated in section 1002 (4), (5), and (6) of this title.

(3) Soldiers of the Union and Confederate Armies of the Civil War.

(b) The Administrator shall furnish, when requested, an appropriate memorial headstone or marker to commemorate any veteran dying in the service, and whose remains have not been recovered or identified or were buried at sea, for placement by the applicant in a national cemetery area reserved for such purposes under the provisions of section 1003 of this title, or in any private or local cemetery.

(c) The headstone or marker furnished under subsection (a) or (b) of this section may be of any material, including but not limited to marble, granite, bronze or slate, requested by the person entitled to request such headstone or marker, if such requested material is determined by the Administrator to be cost effective and, when the headstone or marker is to be placed in a national cemetery, aesthetically compatible with the cemetery area in which it is to be placed.

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PART III—READJUSTMENT AND RELATED BENEFITS

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CHAPTER 37—HOME, CONDOMINIUM, AND MOBILE HOME LOANS

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SUBCHAPTER II—LOANS

Sec.
1810. Purchase or construction of homes.
1811. Direct loans to veterans.
1815. Insurance of loans.
1816. Procedure on default.
1817. Release from liability under guaranty.

1818. [Veterans who serve] *Service* after January 31, [1955] *1955, and prior to August 5, 1964, or after May 7, 1975.*
1819. Loans to purchase mobile homes and mobile home lots.

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Subchapter I—General

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§ 1802. Basic entitlement

(a) Each veteran who served on active duty at any time during World War [II or] *II*, the Korean [conflict] *conflict, or the Vietnam era* and whose total service was for ninety days or more, or who was discharged or released from a period of active duty, any part of which occurred during World War [II or] *II*, the Korean [conflict] *conflict, or the Vietnam era*, for a service-connected disability, shall be eligible for the benefits of this chapter. [Entitlement derived from service during the Korean conflict (1) shall cancel any unused entitlement derived from service during World War II, and (2) shall be reduced by the amount by which entitlement from service during World War II, has] *In the case of any veteran who served on active duty in two or more periods specified in the preceding sentence, or in section 1818 of this title, for which eligibility for the benefits under this chapter may be granted, entitlement derived from service during the most recent such period (1) shall cancel any unused entitlement derived from service during any earlier such period, and (2) shall be reduced by the amount by which entitlement from service during any earlier such period has* been used to obtain a direct, guaranteed, or insured loan—

(A) on real property which the veteran owns at the time of application; or

(B) as to which the Administrator has incurred actual liability or loss, unless in the event of loss or the incurrence and payment of such liability by the Administrator the resulting indebtedness of the veteran to the United States has been paid in full.

(b) In computing the aggregate amount of guaranty or insurance entitlement available to a veteran under this chapter, the Administrator may exclude the amount of guaranty or insurance entitlement used for any guaranteed, insured, or direct loan, if—

(1) (*A*) the property which secured the loan has been disposed of by the veteran or has been destroyed by fire or other natural hazard; [and] *or*

[(2)] (*B*) the loan has been repaid in full, or the Administrator has been released from liability as to the loan, or if the Administrator has suffered a loss on such loan, the loss has been paid in full; or

[(3)] (*2*) an immediate veteran-transferee has agreed to assume the outstanding balance on the loan and consented to the use of the veteran-transferee's entitlement, to the extent that the entitlement of the veteran-transferor had been used originally, in place of the veteran-transferor's for the guaranteed, insured, or direct loan, and the veteran-transferee otherwise meets the requirements of this chapter.

The Administrator may, in any case involving circumstances the Administrator deems appropriate, waive one or more of the conditions prescribed in [clauses] *clause* (1) [and (2)] above.

(c) An honorable discharge shall be deemed to be a certificate of eligibility to apply for a guaranteed loan. Any veteran who does not have a discharge certificate, or who received a discharge other than honorable, may apply to the Administrator for a certificate of eligibility. Upon making a loan guaranteed or insured under this chapter, the lender shall forthwith transmit to the Administrator a report thereon in such detail as the Administrator may, from time to time, prescribe. Where the loan is guaranteed, the Administrator shall provide the lender with a loan guaranty certificate or other evidence of the guaranty. The Administrator shall also endorse on the veteran's discharge, or eligibility certificate, the amount and type of guaranty used, and the amount, if any, remaining. Nothing in this chapter shall preclude the assignment of any guaranteed loan or the security therefor.

(d) Loans will be automatically guaranteed under this chapter only if made (1) by any Federal land bank, national bank, State bank, private bank, building and loan association, insurance company, credit union, or mortgage and loan company, that is subject to examination and supervision by an agency of the United States or of any State, (2) by any State, or (3) by any lender approved by the Administrator pursuant to standards established by the Administrator. Any loan proposed to be made to a veteran pursuant to this chapter by any lender not of a class specified in the preceding sentence may be guaranteed by the Administrator if the Administrator finds that it is in accord otherwise with the provisions of this chapter.

(e) The Administrator may at any time upon thirty days' notice require loans to be made by any lender or class of lenders to be submitted to the Administrator for prior approval. No guaranty or insurance liability shall exist with respect to any such loan unless evidence of guaranty or insurance is issued by the Administrator.

(f) Any loan at least 20 per centum of which is guaranteed under this chapter may be made by any national bank or Federal savings and loan association, or by any bank, trust company, building and loan association, or insurance company, organized or authorized to do business in the District of Columbia. Any such loan may be so made without regard to the limitations and restrictions of any other law relating to—

(1) ratio of amount of loan to the value of the property;
(2) maturity of loan;
(3) requirement for mortgage or other security;
(4) dignity of lien; or
(5) percentage of assets which may be invested in real estate loans.

(g) A veteran's entitlement under this chapter shall not be reduced by any entitlement used by the veteran's spouse which was based upon the provisions of paragraph (3) of section 1801(a) of this title.

§ 1803. Basic provisions relating to loan guaranty

(a)(1) Any loan to a [World War II or Korean conflict veteran,] *veteran eligible for benefits under this chapter*, if made for any of the purposes, and in compliance with the provisions, specified in this chapter is automatically guaranteed by the United States in an amount not more than 60 per centum of the loan if the loan is made for any of the purposes specified in section 1810 of this title.

(2) Any unused entitlement of World War II or Korean conflict veterans which expired under provisions of law in effect prior to the date of enactment of the Veterans' Housing Act of 1970 is hereby restored and shall not expire until used.

(b) The liability of the United States under any guaranty, within the limitations of this chapter, shall decrease or increase prorata with any decrease or increase of the amount of the unpaid portion of the obligation.

(c)(1)(*A*) Loans guaranteed or insured under this chapter shall be payable upon such terms and conditions as may be agreed upon by the parties thereto, subject to the provisions of this chapter and regulations of the Administrator issued pursuant to this chapter, and, *except as provided in subparagraph (B) of this paragraph*, shall bear interest not in excess of such rate as the Administrator may from time to time find the loan market demands, except that in establishing the rate of interest that shall be applicable to such loans, the Administrator shall consult with the Secretary of Housing and Urban Development regarding the rate of interest the Secretary considers necessary to meet the mortgage market for home loans insured under section 203(b) of the National Housing Act, and, to the maximum extent practicable, carry out a coordinated policy on interest rates on loans insured under such section 203(b) and on loans guaranteed or insured under this chapter.

(B) Loans guaranteed or insured under this chapter for the purposes of energy-related improvements, as described in section 1810(a)(7) of this title, may bear interest at a rate higher than that specified by the Administrator pursuant to subparagraph (A) of this paragraph, but not in excess of such rate as the Administrator may from time to time find the loan market demands for loans for such purposes, except that in establishing the rate of interest that shall be applicable to such loans, the Administrator shall consult with the Secretary of Housing and Urban Development so that, to the maximum extent possible, a coordinated national policy on interest rates on federally guaranteed or insured loans for such energy-related improvements may be carried out.

(2) The provisions of the Servicemen's Readjustment Act of 1944 which were in effect before April 1, 1958, with respect to the interest chargeable on loans made or guaranteed under such Act shall, notwithstanding the provisions of paragraph (1) of this subsection, continue to be applicable—

(A) to any loan made or guaranteed before April 1, 1958; and

(B) to any loan with respect to which a commitment to guarantee was entered into by the Administrator before April 1, 1958.

(3) This section shall not be construed to prohibit a veteran from paying to a lender any reasonable discount required by such lender, when the proceeds from the loan are to be used:

(A) to refinance indebtedness pursuant to section 1810(a)(5);

(B) to repair, alter, or improve a farm residence or other dwelling pursuant to section 1810(a)(4);

(C) to construct a dwelling or farm residence on land already owned or to be acquired by the veteran except where the land is directly or indirectly acquired from a builder or developer who has contracted to construct such dwelling for the veteran; or

(D) to purchase a dwelling from a class of sellers which the Administrator determines are legally precluded under all circumstances from paying such a discount if the best interest of the veteran would be so served.

(d)(1) The maturity of any loan shall not be more than thirty years and thirty-two days.

(2) Any loan for a term of more than five years shall be amortized in accordance with established procedure.

(3) Any real estate loan (other than for repairs, alternations, or improvements) shall be secured by a first lien on the realty. In determining whether a loan for the purchase or construction of a home is so secured, the Administrator may disregard a superior lien created by a duly recorded covenant running with the realty in favor of a private entity to secure an obligation to such entity for the homeowner's share of the costs of the management, operation, or maintenance of property, services or programs within and for the benefit of the development or community in which the veteran's realty is located, if the Administrator determines that the interests of the veteran borrower and of the Government will not be prejudiced by the operation of such covenant. In respect to any such superior lien to be created after the effective date of this amendment, the Administrator's determination must have been made prior to the recordation of the covenant.

* * * * * * *

Subchapter II—Loans

§ 1810. Purchase or construction of homes

(a) Any loan to a veteran, if made pursuant to the provisions of this chapter, is automatically guaranteed if such loan is for one or more of the following purposes:

(1) To purchase or construct a dwelling to be owned and occupied by the veteran as a home.

(2) To purchase a farm on which there is a farm residence to be owned and occupied by the veteran as the veteran's home.

(3) To construct on land owned by the veteran a farm residence to be occupied by the veteran as the veteran's home.

(4) To repair, alter, or improve a farm residence or other dwelling owned by the veteran and occupied by the veteran as the veteran's home.

(5) To refinance existing mortgage loans or other liens which are secured of record on a dwelling or farm residence owned and occupied by the veteran as the veteran's home.

(6) To purchase a one-family residential unit in a [new] condominium housing development or project, [or in a structure built and sold as a condominum,] provided such [development] *development or* project [or structure] is approved by the Administrator under [such] criteria [as] *which* the Administrator shall prescribe *in regulations.*

(7) *To improve a dwelling or farm residence which is to be or is owned and occupied by the veteran as the veteran's home by either installation of solar heating, solar heating and cooling,*

or combined solar heating and cooling, or application of a residential energy conservation measure. As used in this clause, the terms "solar heating", "solar heating and cooling", and "combined solar heating and cooling" shall be defined as defined in clauses (1) and (2) of section 3 of the Solar Heating and Cooling Demonstration Act of 1974 (42 U.S.C. 5502) and shall, in addition, include a passive system based on conductive, convective, or radiant energy transfer; the term "passive system" includes, but is not limited to, window and skylight glazing, thermal floors, walls and roofs, movable insulation panels (in conjunction with glazing), portions of a residential structure which serve as solar furnaces so as to add heat to residences, double pane window insulation, or other components designed to enhance the natural transfer of energy for the purpose of heating or heating and cooling a residence as determined by the Administrator; and the term "residential energy conservation measure" means—

(A) caulking and weatherstripping of all exterior doors and windows;

(B) furnace efficiency modifications limited to—

(i) replacement burners, boilers, or furnaces designed to reduce the firing rate or to achieve a reduction in the amount of fuel consumed as a result of increased combustion efficiency,

(ii) devices for modifying flue openings which will increase the efficiency of the heating system, and

(iii) electrical or mechanical furnace ignition systems which replace standing gas pilot lights;

(C) clock thermostats;

(D) ceiling, attic, wall, and floor insulation;

(E) water heater insulation;

(F) storm windows and doors;

(G) heat pumps; and

(H) such other measures as the Administrator may by regulation identify for purposes of this clause.

If there is an indebtedness which is secured by a lien against land owned by the veteran, the proceeds of a loan guaranteed under this section or made under section 1811 of this title for construction of a dwelling or farm residence on such land may be used also to liquidate such lien, but only if the reasonable value of the land is equal to or greater than the amount of the lien.

(b) No loan may be guaranteed under this section or made under section 1811 of this title unless—

(1) the proceeds of such loan will be used to pay for the property purchased, constructed, or improved;

(2) the contemplated terms of payment required in any mortgage to be given in part payment of the purchase price or the construction cost bear a proper relation to the veteran's present and anticipated income and expenses;

(3) the veteran is a satisfactory credit risk;

(4) the nature and condition of the property is such as to be suitable for dwelling purposes;

(5) the loan to be paid by the veteran for such property or for the cost of construction, repairs, or alterations, does not exceed

the reasonable value thereof as determined by the Administrator; and,

(6) if the loan is for repair, alteration, or improvement of property, such repair, alteration, or improvement substantially protects or improves the basic livability or utility of such property.

After the reasonable value of any property, construction, repairs, or alterations is determined under paragraph (5), the Administrator shall, as soon as possible thereafter, notify the veteran concerned of such determination.

(c) The amount of guaranty entitlement available to a veteran under this section shall not be more than [$17,500] *$25,000* less such entitlement as may have been used previously under this section and other sections of this chapter.

§ 1811. Direct loans to veterans

(a) The Congress finds that housing credit under section 1810 or 1819 of this title is not and has not been generally available to veterans living in rural areas, or in small cities and towns not near large metropolitan areas. It is therefore the purpose of this section to provide housing credit for veterans living in such rural areas and such small cities and towns.

(b) Whenever the Administrator finds that private capital is not generally available in any rural area or small city or town for the financing of loans guaranteed under section 1810 or 1819 of this title, the Administrator shall designate such rural area or small city or town as a "housing credit shortage area". The Administrator shall, with respect to any such area, make, or enter into commitments to make, to any veteran eligible under this title, a loan for any or all of the purposes described in section 1810(a) or 1819 of this title.

(c) No loan may be made under this section to a veteran unless the veteran shows to the satisfaction of the Administrator that—

(1) the veteran is unable to obtain from a private lender in such housing credit shortage area, at an interest rate not in excess of the rate authorized for guaranteed home loans or mobile home loans, as appropriate, a loan for such purpose for which the veteran is qualified under section 1810 or 1819 of this title, as appropriate; and

(2) the veteran is unable to obtain a loan for such purpose from the Secretary of Agriculture under sections 1000–1029 of title 7 or under sections 1471–1483 of title 42.

(d)(1) Loans made under this section shall bear interest at a rate determined by the Administrator, not to exceed the rate authorized for guaranteed home loans or mobile loans, as appropriate, and shall be subject to such requirements or limitations prescribed for loans guaranteed under this title as may be applicable.

(2)(A) Except for any loan made under this chapter for the purposes described in section 1819 of this title, the original principal amount of any loan made under this section shall not exceed an amount which bears the same ratio to $33,000 as the amount of guaranty to which the veteran is entitled under section 1810 of this title at the time the loan is made bears to [$17,500] *$25,000*; and the guaranty entitlement of any veteran who heretofore or hereafter has been granted a loan under this section shall be charged with an amount

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which bears the same ratio of [$17,500] *$25,000* as the amount of th loan bears to $33,000.

(B) The original principal amount of any loan made under thi section for the purposes described in section 1819 of this title shal not exceed [the] *an* amount [specified by the Administrator pur suant to subsection (d) of such section.] *which bears the same ratio to $33,000 as the amount of guaranty to which the veteran is entitled under section 1819 of this title, at the time the loan is made bears to $17,500. The guaranty entitlement of any veteran who is granted a loan under this section, or who, before the date of the enactment of the Veterans' Housing Benefits Improvement Act of 1978, was granted a loan under this section, shall be charged with an amount which bears the same ratio to $17,500 as the amount of the loan bears to $33,000.*

§ 1816. Procedure on default

(a) In the event of default in the payment of any loan guaranteed under this chapter, the holder of the obligation shall notify the Administrator who shall thereupon pay to such holder the guaranty not in excess of the pro rata portion of the amount originally guaranteed, and shall be subrogated to the rights of the holder of the obligation to the extent of the amount paid on the guaranty. Before suit or [foreclosure] *foreclosure*, the holder of the obligation shall notify the Administrator of the [default, and] *default; and*, within thirty days [thereafter] *thereafter*, the Administrator [may, at the Administrator's option, pay the holder of the obligation the unpaid balance of the obligation plus accrued interest and receive an assignment of the loan and security.] *(1) shall, under regulations which the Administrator shall prescribe, investigate, with due regard for any reasonable forbearance by the Administrator for the benefit of the veteran, the desirability of paying the holder of the obligation the unpaid balance of the obligation plus accrued interest and receiving an assignment of the loan and security, and (2) after such investigation may, at the Administrator's option, pay the holder of the obligation such unpaid balance and accrued interest and receive such assignment.* Nothing in this section shall preclude any forbearance for the benefit of the veteran as may be agreed upon by the parties to the loan and approved by the Administrator. The Administrator may establish the date, not later than the date of judgment and decree of foreclosure or sale, upon which accrual of interest or charges shall cease.

* * * * * * *

§ 1818. [Veterans who serve] *Service* after January 31, [1955] *1955, and prior to August 5, 1964, or after May 7, 1975*

(a) Each veteran who served on active duty, any part of which occurred after January 31, 1955, *and prior to August 5, 1964, or after May 7, 1975*, and who—

(1) served for a period of more than 180 days and was discharged or released therefrom under conditions other than dishonorable;

(2) has served more than 180 days in active duty status and continues on active duty without a break therein; or

(3) was discharged or released from *such* active duty [after such date] for a service-connected disability;

shall be eligible for the benefits of this chapter, subject to the provisions of this section *and section 1802(a) of this title.*

[(b) Entitlement under subsection (a), (1) shall cancel any unused entitlement under other provisions of this chapter derived from service during World War II or the Korean conflict, and (2) shall be reduced by the amount by which entitlement from service during World War II or the Korean conflict has been used to obtain a direct, guaranteed, or insured loan—

[(A) on real property which the veteran owns at the time of application; or

[(B) as to which the Administrator has incurred actual liability or loss, unless in the event of loss or the incurrence and payment of such liability by the Administrator the resulting indebtedness has been paid in full.]

[(c)](*b*) Any entitlement to the benefits of this section which had not expired as of the date of enactment of the Veterans' Housing Act of 1970 and any entitlement to such benefits accruing after such date shall not expire until used.

§ 1819. Loans to purchase mobile homes and mobile home lots

(a)(*1*) Notwithstanding any other provision of this chapter, any *loan to a* veteran eligible for [loan guaranty benefits] *the benefits of* [under] this [chapter who has maximum home loan guaranty entitlement available for use shall be eligible for the mobile home loan guaranty benefit or the mobile home lot loan guaranty benefit, or both, under this section. Use of the mobile home loan guaranty benefit or the mobile lot loan guaranty benefit, or both, provided by this section shall preclude the use of any home loan guaranty entitlement under any other section of this chapter until the loan] *chapter, if made pursuant to the provisions of this section, may be* guaranteed [under this section has been paid in full.] *if such loan is for one of the following purposes:*

(A) The purchase of a lot on which to place a mobile home already owned by the veteran.

(B) The purchase of a new or used single-wide mobile home.

(C) The purchase of a new or used single-wide mobile home and a lot on which to place such home.

(D) The purchase of a new or used double-wide mobile home.

(E) The purchase of a new or used double-wide mobile home and a lot on which to place such home.

(2) A loan for any of the purposes described in paragraph (1) of this subsection may include an amount determined by the Administrator to be appropriate to cover the cost of necessary preparation of a lot already owned or to be acquired by the veteran, including the installation of utility connections, sanitary facilities, and paving and the construction of a suitable pad.

(3) Any loan made for the purposes set forth in subparagraph (C) or (E) of paragraph (1) shall be considered as part of one loan. The transaction may be evidenced by a single loan instrument or separate loan instruments for (A) that portion of the loan which finances the purchase of the mobile home, and (B) the portion which finances the purchase of the lot, plus necessary preparation of such lot.

(b)(1) [Subject to the limitations in subsection (d) of this section, a loan to purchase a mobile home under this section may include (or be

augmented by a separate loan for) (A) an amount to finance the acquisition of a lot on which to place such home, and (B) an additional amount to pay expenses reasonably necessary for the appropriate preparation of such a lot, including, but not limited to, the installation of utility connections, sanitary facilities and paving, and the construction of a suitable pad.] *Use of entitlement under this section for the purchase of a mobile home unit shall preclude the use of remaining entitlement for the purchase of an additional mobile home unit until the unit which secured the loan has been disposed of by the veteran or has been destroyed by fire or other natural hazard.*

(2) [Subject to the limitations in subsection (d) of this section, a loan may be made to purchase a lot on which to place a mobile home if the veteran already has such a home. Such a loan may include an amount sufficient to pay expenses reasonably necessary for the appropriate preparation of such a lot, including, but not limited to, the installation of utility connections, sanitary facilities, and paving, and the construction of a suitable pad.] *The Administrator shall restore the entitlement of the veteran to all loan guaranty benefits under this chapter when the conditions prescribed in section 1802(b) of this title have been met.*

(c)(1) [Any loan to a veteran eligible under] *Loans for any of the purposes authorized by* subsection (a) *of this section* shall be [guaranteed by] *submitted to* the Administrator [if (A) the loan is for the purpose of purchasing a new mobile home or for the purchase of a used mobile home which meets or exceeds minimum requirements for construction, design, and general acceptability prescribed by the Administrator, or the loan is for the purpose of purchasing a lot on which to place a mobile home previously purchased by the veteran, whether or not such mobile home was purchased with a loan guaranteed, insured or made by another Federal agency, and (B) the loan complies in all other respects with the requirements of this section. Loans for such purpose (including those which will also finance the acquisition of a lot or site preparation as authorized by subsection (b) of this section) shall be submitted to the Administrator] for approval prior to loan closing except that the Administrator may exempt any lender of a class listed in section 1802(d) of this title from compliance with such prior approval requirement if the Administrator determines that the experience of such lender or class of lenders in mobile home financing warrants such exemption.

(2) Upon determining that a loan submitted for prior approval is eligible for guaranty under this section, the Administrator shall issue a commitment to guarantee such loan and shall thereafter guarantee the loan when made if such loan qualifies therefor in all respects.

(3) The Administrator's guaranty shall not exceed *the lesser of* 50 percent of the [loan, including any amount for lot acquisition and site preparation, and payment of such guaranty shall be made only after liquidation of the security for the loan and the filing of an accounting with the Administrator. In any such accounting the Administrator shall permit to be included therein accrued unpaid interest from the date of the first uncured default to such cutoff date as the Administrator may establish, and the Administrator shall allow the holder of the loan to charge against the liquidation or resale proceeds, accrued interest from the cutoff date established to such further date

as the Administrator may determine and such costs and expenses as the Administrator determines to be reasonable and proper. The liability of the United States under the guaranty provided for by this section shall decrease or increase pro rata with any decrease or increase of the amount of the unpaid portion of the obligation] *loan amount or the maximum loan guaranty entitlement available, not to exceed $17,500. Payment of a claim under such guaranty shall be made only after liquidation of the security for the loan and the filing of an accounting with the Administrator.*

(4) The amount of guaranty entitlement available to a veteran under this section shall not be more than $17,500 less such entitlement as may have been used under this section. Use of entitlement under section 1810 or 1811 shall reduce entitlement available for use under this section to the same extent that entitlement available under section 1810 is reduced to less than $17,500.

(d)(1) [The Administrator shall establish a loan maximum for each type of loan authorized by this section. In the case of a new mobile home, the Administrator may establish a maximum loan amount based on the manufacturer's invoice cost to the dealer and such other cost factors as the Administrator considers proper to take into account. In the case of a used mobile home, the Administrator shall establish a maximum loan amount based on the Administrator's determination of the reasonable value of the property. In the case of any lot on which to place a mobile home, whether or not the mobile home was financed with assistance under this section, and in the case of necessary site preparation, the loan amount for such purposes may not exceed the reasonable value of such lot or an amount appropriate to cover the cost of necessary site preparation or both, as determined by the Administrator.] *The maturity of any loan guaranteed under this section shall not be more than—*

(A) fifteen years and thirty-two days in the case of a loan for the purchase of—

(i) a lot only,

(ii) a single-wide mobile home only, or

(iii) a single-wide mobile home and a lot, or

(B) twenty years and thirty-two days in the case of a loan for purchase of—

(i) a double-wide mobile home only, or

(ii) a double-wide mobile home and a lot.

[(2) The maximum permissible loan amounts and the term for which the loans are made shall not exceed—

[(A) $12,500 for twelve years and thirty-two days in the case of a loan covering the purchase of a single-wide mobile home only and such additional amount as is determined by the Administrator to be appropriate to cover the cost of necessary site preparation where the veteran owns the lot, or

[(B) $20,000 for twenty years and thirty-two days in the case of a loan covering the purchase of a double-wide mobile home only, and such additional amount as is determined by the Administrator to be appropriate to cover the cost of necessary site preparation where the veteran owns the lot, or

[(C) $20,000 (but not to exceed $12,500 for the mobile home) for fifteen years and thirty-two days in the case of a loan covering

the purchase of a single-wide mobile home and an undeveloped lot on which to place such home, which includes such amount as is determined by the Administrator to be appropriate to cover the cost of necessary site preparation, or

[(D) $27,500 (but not to exceed $20,000 for the mobile home) for twenty years and thirty-two days in the case of a loan covering the purchase of a double-wide mobile home and an undeveloped lot on which to place such home, which includes such amount as is determined by the Administrator to be appropriate to cover the cost of necessary site preparation, or

[(E) $20,000 (but not to exceed $12,500 for the mobile home) for fifteen years and thirty-two days in the case of a loan covering the purchase of a single-wide mobile home and a suitably developed lot on which to place such home, or

[(F) $27,500 (but not to exceed $20,000 for the mobile home) for twenty years and thirty-two days in the case of a loan covering the purchase of a double-wide mobile home and a suitably developed lot on which to place such home, or

[(G) $7,500 for twelve years and thirty-two days in the case of a loan covering the purchase of only an undeveloped lot on which to place a mobile home owned by the veteran, which includes such amount as is determined by the Administrator to be appropriate to cover the cost of necessary site preparation, or

[(H) $7,500 for twelve years and thirty-two days in the case of a loan covering the purchase of a suitably developed lot on which to place a mobile home owned by the veteran.]

(2) *Nothing in paragraph (1) shall preclude the Administrator, under regulations which the Administrator shall prescribe, from consenting to necessary advances for the protection of the security or the holder's lien, or to a reasonable extension of the term or reamortization of such loan.*

(3) Such limitations set forth in paragraph (2) of this subsection on the amount and term of any loan shall not be deemed to preclude the Administrator, under regulations which the Administrator shall prescribe, from consenting to necessary advances for the protection of the security or the holder's lien, or to a reasonable extension of the term or reamortization of such loan.

(e) No loan shall be guaranteed under this section unless—

(1) the loan is repayable in approximately equal monthly installments;

(2) the terms of repayment bear a proper relationship to the veteran's present and anticipated income and expenses, and the veteran is a satisfactory credit risk, taking into account the purpose of this program to make available lower cost housing to low and lower income veterans, especially those who have been recently discharged or released from active military, naval, or air service, who may not have previously established credit ratings;

(3) the loan is secured by a first lien on the mobile home purchased with the proceeds of the loan and on any lot acquired or improved with the proceeds of the loan;

(4) the amount of the [loan, subject to the maximums established in subsection (d) of this section, is not in excess of the maximum amount prescribed by the Administrator;] *loan to be*

paid by the veteran is not in excess of the amount determined to be reasonable, based upon—

(A) with respect to the portion of the loan to purchase a new mobile home, such cost factors as the Administrator considers proper to take into account;

(B) with respect to the portion of the loan to purchase a used mobile home, the reasonable value of the property, as determined by the Administrator;

(C) with respect to the portion of the loan to purchase a lot, the reasonable value of such lot as determined by the Administrator; and

(D) with respect to the portion of the loan to cover the cost of necessary site preparation, an appropriate amount as determined by the Administrator;

(5) the veteran certifies, in such form as the Administrator shall prescribe, that the veteran will personally occupy the property as the veteran's home;

(6) the mobile home is or will be placed on a site which meets specifications which the Administrator shall establish by regulation; and

(7) the interest rate to be charged on the loan does not exceed the permissible rate established by the Administrator.

(f) The Administrator shall establish such rate of interest for mobile home loans and mobile home lot loans as the Administrator determines to be necessary in order to assure a reasonable supply of mobile home loan financing for veterans under this section.

[(g) Entitlement to the loan guaranty benefit used under this section shall be restored a single time for any veteran by the Administrator provided the first loan has been repaid in full.]

[(h)] *(g)* The Administrator shall promulgate such regulations as the Administrator determines to be necessary or appropriate in order to fully implement the provisions of this section, and such regulations may specify which provisions in other sections of this chapter the Administrator determines should be applicable to loans guaranteed or made under this section. The Administrator shall have such powers and responsibilities in respect to matters arising under this section as the Administrator has in respect to loans made or guaranteed or under other sections of this chapter.

[(i)] *(h)* No loan for the purchase of a mobile home shall be guaranteed under this section unless the mobile home and lot, if any, meet or exceed standards for planning, construction, and general acceptability as prescribed by the Administrator and no loan for the purchase of a lot on which to place a mobile home owned by a veteran shall be guaranteed under this section unless the lot meets such standards prescribed for mobile home lots. Such standards shall be designed to encourage the maintenance and development of sites for mobile homes which will be attractive residential areas and which will be free from, and not substantially contribute to, adverse scenic or environmental conditions. For the purpose of assuring compliance with such standards, the Administrator shall from time to time inspect the manufacturing process of mobile homes [to be sold to veterans and conduct random onsite inspections of mobile homes purchased with

assistance under this chapter.] *sold to veterans utilizing benefits under this chapter; and, for such purpose and the additional purpose of monitoring safety factors involved in the installation of such homes, the Administrator shall from time to time conduct random onsite inspections of mobile homes purchased with such assistance. Notwithstanding the preceding sentence, the Administrator may, at the Administrator's discretion, delegate to the Secretary of Housing and Urban Development the authority and responsibility of the Administrator to inspect such manufacturing process, subject to (1) the acceptance of such delegation by such Secretary, (2) a requirement that the Administrator promptly be provided the full results of such Department of Housing and Urban Development inspections, and (3) the right of the Administrator at any time to withdraw such delegation in whole or in part and for such period or periods of time as the Administrator determines to be appropriate.*

[(j)] (*i*) The Administrator shall require the manufacturer to become a warrantor of any new mobile home which is approved for purchase with financing through the assistance of this chapter and to furnish to the purchaser a written warranty in such form as the Administrator shall require. Such warranty shall include (1) a specific statement that the mobile home meets the standards prescribed by the Administrator pursuant to the provisions of subsection [(i)] (*h*) of this section; and (2) a provision that the warrantor's liability to the purchaser or owner is limited under the warranty to instances of substantial nonconformity to such standards which become evident within one year from date of purchase and as to which the purchaser or owner gives written notice to the warrantor not later than ten days after the end of the warranty period. The warranty prescribed herein shall be in addition to, and not in derogation of, all other rights and privileges which such purchaser or owner may have under any other law or instrument and shall so provide in the warranty document.

[(k)] (*j*) Subject to notice and opportunity for a hearing, the Administrator is authorized to deny guaranteed or direct loan financing in the case of mobile homes constructed by any manufacturer who refuses to permit the inspections provided for in subsection [(i)] (*h*) of this section; or in the case of mobile homes which are determined by the Administrator not to conform to the aforesaid standards; or where the manufacturer of mobile homes fails or is unable to discharge the manufacturer's obligations under the warranty.

[(l)] (*k*) Subject to notice and opportunity for a hearing, the Administrator may refuse to approve as acceptable any site in a mobile home park or subdivision owned or operated by any person whose rental or sale methods, procedures, requirements, or practices are determined by the Administrator to be unfair or prejudicial to veterans renting or purchasing such sites. The Administrator may also refuse to guarantee or make direct loans for veterans to purchase mobile homes offered for sale by any dealer if substantial deficiencies have been discovered in such homes, or if the Administrator determines that there has been a failure or indicated inability of the dealer to discharge contractual liabilities to veterans, or that the type of contract of sale or methods, procedures, or practices pursued by the dealer in the marketing of such properties have been unfair or prejudicial to veteran purchasers.

[(m)] (*l*) The Administrator's annual report to Congress shall, beginning 12 months following the date of enactment of the Veterans' Housing Act of 1970, include a report on operations under this section, including the results of inspections required by subsection [(i)] (*h*) of this section, experience with compliance with the warranty required by subsection [(j)] (*i*) of this section, and the experience regarding defaults and foreclosures.

[(n)] (*m*) The provisions of section 1804(d) and section 1821 of this chapter shall be fully applicable to lenders making guaranteed mobile home loans and mobile home lot loans and holders of such loans.

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Calendar No. 979

95TH CONGRESS
2d Session

SENATE

REPORT
No. 95-1056

CIVIL RIGHTS
OF
INSTITUTIONALIZED PERSONS

REPORT
OF THE
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE
ON
S. 1393
together with
MINORITY VIEWS

JULY 31 (legislative day, MAY 17), 1978.—Ordered to be printed

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[95th Congress]

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Calendar No. 979

95TH CONGRESS
2d Session

SENATE

REPORT
No. 95–1056

CIVIL RIGHTS OF INSTITUTIONALIZED PERSONS

JULY 31 (Legislative day, MAY 17), 1978.—Ordered to be printed

Mr. BAYH, from the Committee on the Judiciary, submitted the following

REPORT

together with

SEPARATE VIEWS

[To accompany S. 1393]

The Committee on the Judiciary, to which was referred the bill (S. 1393) to grant the United States Attorney General statutory authority to initiate and to intervene in civil actions brought to redress systematic deprivations of constitutional and Federal statutory rights of persons residing in state institutions, having considered the same, reports favorably thereon, and recommends that the bill do pass.

I. PURPOSE

One measure of a nation's civilization is the quality of treatment it provides persons entrusted to its care. The past decade has borne testimony to the growing civilization of this country through its commitment to the adequate care of its institutionalized citizens.[1] Nowhere is that commitment more evident than in the actions of the United States Justice Department.

Since 1971, the Attorney General has participated in a series of civil actions seeking to redress widespread violations of constitutional and federal statutory rights of persons residing in state institutions. Through litigation conducted by the Civil Rights Division, the Justice Department has participated as *amicus curiae* or plaintiff-intervenor in more than a score of suits brought to secure decent and humane conditions in institutions housing the mentally ill, the retarded, the chronically physically ill, prisoners, juvenile delinquents, and ne-

[1] See, *e.g.* Developmentally Disabled Assistance and Bill of Rights Act of 1975, 42 U.S.C. 6010 *et seq.* (Pub. L. No. 94–103); Rehabilitation Act of 1973, 29 U.S.C. 794; (Pub. L. No. 93–112); Education of All Handicapped Children Act of 1975 (Pub. L. No. 94–142); Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C. 5601 *et seq.* (Pub. L. No. 93–415); Omnibus Crime and Safe Streets Act, 42 U.S.C. 3701 (Pub. L. No. 90–351); Parole Commission and Reorganization Act of 1976, 18 U.S.C. 4201 *et seq.* (Pub. L. No. 94–233)

glected children. In addition, the Attorney General has participated in suits successfully challenging the constitutionality of several state commitment statutes.

At least ten Federal district courts have requested the Justice Department to participate in litigation concerning the rights of institutionalized individuals. The Attorney General has also petitioned to intervene in pending cases, to represent the interests of the United States in securing basic constitutional rights for its institutionalized citizens. Whether by request of the court or by petition to intervene, however, the Justice Department invariably has brought to the litigation process investigative resources, technical advice, and legal expertise unavailable to private litigants. Courts have been openly appreciative of these efforts.[2]

Apart from their salutary effects on the management of such litigation, the Justice Department's activities have enhanced the lives of thousands of institutionalized individuals throughout the country. In every suit in which the Department has participated, the trial and appellate courts have upheld the plaintiffs' claims and ordered extensive relief. As a result, conditions have improved significantly in dozens of institutions across the Nation: decent and humane living environments have been secured for mentally ill and retarded residents in state hospitals; barbaric treatment of adult and juvenile prisoners has been curbed; persons unnecessarily or improperly committed have been released or relocated in less restrictive community placements; and States facing the prospect of suit by the Attorney General have voluntarily upgraded conditions in their institutions and rewritten State commitment laws to comply with previously announced constitutional standards.

Despite the proven effectiveness of the Department's efforts, its litigation program stands threatened by two recent Federal court decisions. District courts in both Maryland and Montana recently ruled that, absent express statutory authority, the Attorney General lacked standing to initiate civil actions challenging conditions in two State facilities for the mentally retarded.[3] The Maryland suit was recently upheld on appeal.[4]

Although Congress has, in other contexts, given the Attorney General explicit authority to redress systematic deprivations of constitutional rights,[5] it has never expressly authorized him to enforce fundamental Federal rights of institutionalized individuals. The Maryland and Montana decisions make clear that without a Federal statute clarifying the Attorney General's authority to initiate and to inter-

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[2] See text at note 9 *infra*. See also comments of Judge Nicholas J. Walinski, Hearings on S. 1393 Before the Subcomm. on the Constitution of the Senate Comm. on the Judiciary, 95th Cong., 1st Sess., 548, 552–53 (1977) [hereinafter cited as S. 1393 Hearings]. The Department's efforts have also been favorably commented upon in legal periodicals, see, *e.g.*, Herr, Civil Rights, Uncivil Asylums and the Retarded, 43 CIN. L. REV. 679, 779 (1974).

[3] *United States* v. *Solomon*, 419 F. Supp. 358 (D. Md. 1976) (Rosewood State Hospital); *United States* v. *Mattson*, C.A. No. 74–138–BU (D. Mont., September 29, 1976), *appeal docketed*, No. 76–3568, 9th Cir., October 19, 1976 (Boulder River Hospital).

[4] *United States* v. *Solomon*, C.A. No. 76–2184 (4th Cir., October 12, 1977).

[5] *E.g.*, Title VI of the Civil Rights Act of 1960, 42 U.S.C. 1971(c) (discrimination in voting); Title II of the Civil Rights Act of 1964, 42 U.S.C. 2000a–5(a) (discrimination in public accommodations); Title III of the Civil Rights Act of 1964, 42 U.S.C. 2000b(a) (discrimination in public facilities); Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e–6(a) (employment discrimination); Title IX of the Civil Rights Act of 1964, 42 U.S.C. 2000h–2 (denial of equal protection); Title IV of the Civil Rights Act of 1964, 42 U.S.C. 2000c–6(a) (discrimination in public education).

vene in such suits, the Department's litigative efforts to protect the institutionalized will be paralyzed. In the words of Louis M. Thrasher, Director of the Office of Special Litigation in the Civil Rights Division:

> If the Department is not provided the opportunity to proceed with our litigation program, there is really no one else in the country who has the capacity to hold responsible persons accountable for such inhumane conditions.[6]

S. 1393 provides that authority. It creates no new substantive rights, but gives the Attorney General legal standing to enforce existing constitutional and Federal statutory rights of institutionalized persons. By codifying the authority of the Attorney General to initiate and to intervene in suits to redress serious and pervasive patterns of institutional abuse, S. 1393 ensures that institutionalized citizens will be afforded the full measure of protections guaranteed them by the Constitution of the United States.

II. Text of Senate Bill 1393

The text of S. 1393 is as follows:

A BILL To authorize actions by the Attorney General to redress deprivations of constitutional and Federal statutory rights of institutionalized persons.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Section 1. Whenever the Attorney General has reasonable cause to believe that any State or political subdivision, official, employee, or agent thereof, or other person acting on behalf of a State or political subdivision of a State is subjecting persons residing in an institution, as defined in section 5, to extraordinary or flagrant conditions (conditions which are willful or wanton or conditions of gross neglect) which deprive them of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States causing them to suffer grievous harm, and that such deprivation is pursuant to a pattern or practice of resistance to the full enjoyment of such rights, privileges, or immunities, the Attorney General for or in the name of the United States may institute a civil action in any appropriate United States district court against such party for such equitable relief as may be appropriate to insure the full enjoyment of such rights, privileges, or immunities, except that such equitable relief shall be available to persons residing in an institution as defined in section 5(a)(3) only insofar as such persons are subjected to conditions which deprive them of rights, privileges, or immunities secured or protected by the Constitution of the United States. The Attorney General shall personally sign the complaint in such action.

Sec. 2. (a) At the time of the commencement of an action under section 1, the Attorney General shall certify to the court—

(1) that at least 30 days previously he has notified in writing

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[6] Letter from Louis M. Thrasher, Director, Office of Special Litigation, United States Department of Justice, Civil Rights Division, to Carol L. Barbieto, Ph. D., Executive Director, Mental Health Association of Colorado, Inc., October 9, 1976.

the Governor or chief executive officer and attorney general or chief legal officer of the appropriate State or political subdivision and the director of the institution of—

(A) the alleged conditions which deprive rights, privileges, or immunities secured or protected by the Constitution or laws of the United States;

(B) the supporting facts giving rise to the alleged conditions, including the dates or time period during which the alleged conditions existed;

(C) the measures which he believes may remedy the alleged conditions;

(2) that he or his designee has made a reasonable effort to consult with the Governor or chief executive officer and attorney general or chief legal officer of the appropriate State or political subdivision and the director of the institution, or their designees, regarding financial, technical or other assistance which may be available from the United States to assist in the correction of such conditions;

(3) that he has endeavored to eliminate the alleged conditions and pattern or practice of resistance by informal methods;

(4) that he is satisfied that the appropriate officials have had a reasonable time to take appropriate action to correct such conditions, taking into consideration the laws of the State in which the institution is located, the time required to remodel or make necessary changes in physical facilities or relocate residents, and any other extenuating circumstances involved in correcting such conditions; and

(5) that he believes that such an action by the United States is of general public importance and will materially further the vindication of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States.

(b) Any certification made by the Attorney General pursuant to this section shall be personally signed by him.

SEC. 3. (a) Whenever an action has been commenced in any court of the United States seeking relief from conditions which deprive persons residing in institutions of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States causing them to suffer grievous harm and the Attorney General has reasonable cause to believe that such deprivation is pursuant to a pattern or practice of resistance to the full enjoyment of such rights, privileges, or immunities, the Attorney General for or in the name of the United States may intervene in such action upon timely application if the Attorney General certifies to the Court at the time of filing of the motion to intervene that:

(1) the case is of general public importance and will materially further the vindication of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States;

(2) he has notified in writing the Governor or chief executive officer and attorney general or chief legal officer of the appropriate State or political subdivision and the director of the institution of—

(A) the alleged conditions which deprive rights, privileges, or immunities secured or protected by the Constitution or laws of the United States;

(B) the supporting facts giving rise to the alleged conditions, including the dates or time period during which the alleged conditions existed;

(C) the measures which he believes may remedy the alleged conditions; and

(3) that he is satisfied that the appropriate officials have had a reasonable time to take appropriate action to correct such conditions, taking into consideration the laws of the State in which the institution is located, the time required to remodel or make necessary changes in physical facilities or relocate residents, and any other extenuating circumstances involved in correcting such conditions.

(b) Any certification or motion to intervene made by the Attorney General pursuant to this section shall be personally signed by him.

(c) In such case the United States shall be entitled to the same relief as if it had instituted the action.

SEC. 4. The Attorney General shall include in his report to Congress on the business of the Department of Justice prepared pursuant to section 522 of title 28, United States Cod a statement of the number, variety, and outcome of all actions institut l or in which the Attorney General has intervened pursuant to this Act.

SEC. 5. As used in this Act—

(a) "institution" means—

(1) any facility for mentally ill, disabled, or retarded persons;

(2) any facility for chronically ill or handicapped persons, including any State-supported intermediate or long-term care or custodial care facility;

(3) any jail, prison, or other correctional facility, or any pretrial detention facility; or

(4) any facility in which juveniles are placed awaiting trial or in which juveniles reside for purposes of receiving care or treatment, or for any other State purpose.

(b) privately owned and operated facilities shall not be deemed "institutions" under this Act unless persons reside in such facilities as a result of State action and are thereby subjected to extraordinary or flagrant conditions which are willful or wanton or are conditions of gross negligence.

(c) "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, or any of the territories and possessions of the United States.

SEC. 6. Provisions of this Act shall not authorize promulgation of regulations defining standards of care.

III. LEGISLATIVE HISTORY

Since 1976, Congress has indicated a desire to assist the Attorney General in conducting his litigation program on behalf of the institutionalized. Following the testimony of Office of Special Litigation

Director Thrasher at Hearings before the Joint Subcommittees on Long-Term Care and Health of the Elderly, then Chairman Frank E. Moss commented:

> We are pleased that the Civil Rights Division is engaged in the litigation of these matters. * * * We would be pleased if you would let us know if there is any statutory authority you need to enable you to do your job better. We would be glad to get your recommendations.[7]

On April 26, 1977, Senator Birch Bayh introduced S. 1393, a bill to grant the U.S. Attorney General statutory authority to initiate and to intervene in litigation seeking to redress widespread deprivations of institutionalized persons' constitutional and Federal statutory rights. The bill was referred to the committee, which referred it to the Subcommittee on the Constitution. Five days of hearings were held in Washington, D.C., on June 17, 22, 23, 30, and July 1, 1977. A total of 40 witnesses testified on S. 1393, including former institution residents, superintendents of mental and correctional facilities, public health officials, State attorneys general, doctors, lawyers, experts in the fields of mental retardation, mental health, and penology, and representatives of numerous organizations interested in the care of the institutionalized.

The Subcommittee on the Constitution met on November 15, 1977 to consider S. 1393. By a vote of 4 to 0, the subcommittee reported the bill to the committee, with the recommendation that favorable action be taken on it.

The Committee on the Judiciary considered and discussed the bill at several meetings in 1978, and on July 18, 1978 met for the purpose of final consideration on reporting the bill. After rejecting by a vote of 13 to 3 a proposed amendment to eliminate jails, prisons and correctional facilities from coverage, the Committee accepted without objection amendments offered by Senators Hatch and Wallop and by a vote of 11 to 6 ordered S. 1393 reported with a recommendation that it be passed by the Senate.

IV. Background

In 1971, guardians for a class of patients at Alabama's Bryce Hospital for the mentally ill brought suit against institution administrators and State officials, alleging that the conditions at Bryce and the State's two other hospitals for the mentally handicapped fell below the minimum levels of care and treatment required by the Federal Constitution. That case, *Wyatt* v. *Stickney*,[8] marked not only the beginning of a series of lawsuits brought to secure fundamental rights for institutionalized individuals, but the inauguration of the Justice Department's litigation program to assist in that effort. For it was in *Wyatt* that Judge Frank M. Johnson, Jr. first ordered the Attorney General to appear as litigating *amicus curiae*, to assist the court in gathering evidence of institutional conditions, to evaluate the adequacy of the hospital's treatment programs, and to assist institution officials in meet-

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[7] Joint Hearings on Mental Health and the Elderly, Before the Subcomm. on Long-Term Care and the Subcomm. on Health of the Elderly of the Senate Special Comm. on Aging, 94th Cong., 1st sess., 52 (1975).

[8] 325 F. Supp. 781, 334 F. Supp. 1341, 344 F. Supp. 373, 344 F. Supp. 387 (M.D. Ala. 1971–72), *aff'd sub nom. Wyatt* v. *Aderholt*, 503 F. 2d 1305 (5th Cir. 1974).

ing federal standards for adequate care. At the conclusion of trial, the court took special notice of the "exemplary service" provided by the Department.[9]

Since 1971, the Office of Special Litigation and Office of Public Accommodations and Facilities of the Civil Rights Division of the Justice Department have continued to participate in *Wyatt*-type suits challenging conditions of confinement in state institutions across the nation, and successfully attacking the constitutionality of several state commitment statutes.[10] Often the Department has requested or been ordered to appear by courts in suits initiated by private parties; in such cases the Department has acted in the capacity in litigating *amicus* or plaintiff-intervenor. More recently, the Department initiated suit as the sole plaintiff, on behalf of the United States, to secure humane and adequate treatment for its institutionalized citizens.[11]

Common to every suit in which the Department has participated has been the relevation of conditions so deplorable that courts have uniformly ordered immediate and unconditional relief. A sample of those conditions and the impact of the Attorney General's involvement in suits brought to ameliorate such conditions merits careful consideration.

A. INSTITUTIONAL CONDITIONS

Mental institutions.—The conditions documented in the *Wyatt* decision and subsequent suits dispel any doubt as to the existence, severity, or scope of institutional abuse. In *Wyatt*, the record revealed that Alabama's mental hospitals were severely overcrowded and understaffed. Retarded persons were tied to their beds at night in the absence of sufficient staff to care for them; toilet paper was locked up to avoid additional cleanup work. One patient was regularly confined in a straightjacket for 9 years, as a result of which she lost the use of both arms.[12] The State ranked 50th in the Nation in per patient expenditures and the less than 50 cents per patient per day spent on food resulted in a diet "coming closer to punishment by starvation than nutrition." [13] The court ultimately characterized conditions at the State hospital for the mentally retarded as "conducive only to the deterioration and debilitation of the residents * * * and substandard to the point of endangering [their] health and lives." [14]

The conditions documented in *Wyatt* were neither unique to Alabama facilities nor endemic to the South. In a suit challenging the adequacy of care at New York's Willowbrook State School for the Mentally Retarded, the trial record revealed equally appalling con-

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[9] 344 F. Supp. at 375, n. 3.

[10] *Stamus and United States* v. *Leonhardt and State of Iowa*, 414 F. Supp. 439 (S.D. Iowa 1976); *Alexander and United States* v. *Hall*, C.A. No. 72–209 (D.S.C. 1974); *Bartley* v. *Kremens*, 402 F. Supp. 1039. (E.D. Pa. 1975) (three-judge court), *vacated and remanded sub nom. Kremens* v. *Bartley*, No. 75–1074, S. Ct., decided May 16, 1977; *Ewing* v. *Gaver*, C.A. No. C–74–147 (N.D. Ohio 1974).

[11] *United States* v. *Solomon*, 419 F. Supp. 358 (D. Md. 1976), *aff'd* C.A. No. 76–2184 (4th Cir., October 12. 1977); *United States* v. *Mattson*, C.A. No. 74–138–BU (D. Mont., September 29, 1976), *appeal docketed*, No. 76–3568. 9th Cir., October 19. 1976.

[12] The evidence at trial revealed that four patients died as the result of inadequate supervision: one when a garden hose was inserted in his rectum by a fellow patient charged with the responsibility of cleaning him; another when a fellow patient pushed the wheelchair in which he was confined through a shower of scalding water; a third when soapy water was forced down his throat; and a fourth when he ingested an overdose of drugs left unattended and unsecured. 503 F. 2d at 1311, n. 6.

[13] *Wyatt* v. *Stickney*, 334 F. Supp. at 1343; *Wyatt* v. *Aderholt*, 503 F. 2d at 1310–11.

[14] *Wyatt* v. *Aderholt*, 503 F. 2d at 1309, n. 4.

ditions.[15] Participating as litigating *amicus*, the Department assisted plaintiffs in producing evidence of massive overdrugging of retarded children by staff, and physical abuse of weaker residents by stronger ones. In the absence of adequate supervision, children suffered broken teeth, loss of an eye, and loss of part of an ear bitten off by another resident. In an 8-month period, the 5,000-resident facility reported over 1,300 incidents of injury, patient assault, or patient fights. Unsanitary conditions led to 100 percent of the residents contracting hepatitis within 6 months of their admission.[16]

The trial court characterized conditions at Willowbrook as "shocking," "inhumane," and "hazardous to the health, safety, and sanity of the residents." [17]

Facilities For Juveniles.—In a 1974 case challenging conditions in Texas' five juvenile detention facilities, the Justice Department was again ordered by the court to appear as litigating *amicus*.[18] After a year of discovery and six weeks of trial, the court determined that the staff was engaged in "a widespread practice of beating, slapping, kicking, and otherwise physically abusing juvenile inmates, in the absence of any exigent circumstances." [19] Brutality was found to be "a regular occurrence * * * encouraged by those in authority." [20]

In *Gary W.* v. *Stewart*,[21] the Justice Department participated as plaintiff-intervenor in a suit successfully challenging Louisiana's practice of sending hundreds of retarded, disturbed, neglected, abandoned, and otherwise dependent children to out-of-State residential placements, where conditions of care and treatment were often inadequate. The Justice Department's discovery, conducted throughout the State of Texas, revealed that children were physically abused, handcuffed, beaten, chained, tied up, kept in cages, and overdrugged with psychotropic medication.[22]

Correctional Facilities.—Justice Department-assisted litigation challenging conditions of confinement in prisons and jails revealed that conditions in correctional facilities across the Nation were, if possible, worse than those in mental institutions. In a suit attacking conditions in the prisons of Oklahoma's State Penitentary System,[23] the court found that facilities designed to accommodate 2,400 inmates housed 4,600. Inmates were compelled to sleep in garages and stair-

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[15] *New York State Ass'n. for Retarded Children* v. *Rockefeller*, 357 F. Supp. 752 (E.D. N.Y. 1973), *sub nom.*, *NYSARC* v. *Carey*, 393 F. Supp. 715 (E.D. N.Y. 1975) (consent decree).

[16] A cerebral palsy victim mistakenly diagnosed as mentally retarded spent 16 years at Willowbrook. Testifying on the conditions in the institution, he recalled that wards of 40 residents were fed in a period of 3 to 4 minutes, with the courses of an individual meal mixed together and shoveled down the throats of those unable to feed themselves. Testimony of Bernard Carabello, S. 1393 hearings, 76. Confirming this testimony, Dr. Michael Wilkins, a former staff physician at Willowbrook, testified that the foremost cause of resident death was pneumonia resulting from the inhalation of rapidly force-fed food. He also noted that sexual assaults were "a common practice" at Willowbrook. S. 1393 hearings, 74.

[17] 357 F. Supp. at 756, 770.

[18] *Morales* v. *Turman*, 364 F. Supp. 116 (E.D. Tex. 1973), 383 F. Supp. 53 (E.D. Tex. 1974); *rev'd. for absence of a three-judge court*, 535 F. 2d 864 (5th Cir. 1976), *judgment of Court of Appeals rev'd. and remanded*, 430 U.S. 322 (1977).

[19] 364 F. Supp. at 173.

[20] 383 F. Supp. at 73. Juveniles were teargassed "in situations in which no riot or other disturbance was imminent." 364 F. Supp. at 170. One youth was sprayed while confined in a cell, another while being held by two correctional officers, and a third while attempting to flee a beating. *Id.* Selected youths were confined in cells lacking "the minimum bedding necessary for comfortable and healthful sleep," while others were denied regular access to bathroom facilities. *Id.* at 172. Some were placed in homosexual dormitories as a form of punishment.

[21] No. 74-2412 (E.D. La., filed July 26, 1976).

[22] S. 1393 hearings, 788.

[23] *Battle* v. *Anderson*, 376 F. Supp. 402 (E.D. Okla. 1974), —— F. Supp.—— (June 14, 1977).

ells. Groups of four men were regularly confined in 6-by-6-foot cells ith no ventilation, no hot water, and sewage leaks. Over a 3-year eriod, one facility reported 40 stabbings, 44 serious beatings, and 19 iolent deaths.[24] Kitchen and food storage areas were found to be in- ested with mice, rats, and vermin, and firefighting capabilities were eemed "nonexistent." The court ultimately concluded that conditions n the prisons constituted "an immediate and intolerable threat to the afety and security of inmates, prison personnel, and the State." [25]

A similar conclusion was reached by a trial court evaluating evidence n a suit brought with the assistance of the Justice Department against Mississippi State Penitentiary at Parchman.[26] Dead rats surrounded he barracks, broken windows were stuffed with rags to keep out the old and rain, exposed wiring posed a constant threat of fire, and open ewage contributed to the spread of contagious disease. In one camp, 30 men shared three wash basins, which consisted of oil drums cut in alf.[27] Milk of magnesia was forceably administered to inmates as a disciplinary measure; cattle prods were used to keep inmates standing or moving. In a 6-by-6-foot cell with no light, toilet, sink, bed, or mattress, inmates were confined naked for up to three days, without hygienic materials, heat, or adequate food. The court characterized the prison as "unfit for human habitation under any modern concept of decency." [28]

The conditions cited above do not begin to exhaust the range of institutional abuses brought to light by Justice Department-assisted litigation. They do, however, constitute a representative sampling of the practices documented in dozens of decisions issued by courts in virtually every part of the country.[29]

B. JUSTICE DEPARTMENT INVOLVEMENT

1. Legal bases for relief

In all of the cases cited above, the plaintiffs and the Justice Department challenged conditions and practices of the institutions in question as violative of their residents' fundamental rights under the Federal Constitution and in some instances their rights under Federal statutes as well. In every case they prevailed, and it is now generally accepted that the Federal Constitution guarantees institutionalized citizens a decent and humane living environment.[30]

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[24] 376 F. Supp. at 410, 412.
[25] Order of June 14, 1977. ——— F. Supp. ———.
[26] *Gates* v. *Collier*, 349 F. Supp. 881 (N.D. Miss. 1972), *aff'd*, 501 F. 2d 1291 5th Cir. 1974).
[27] 501 F. 2d at 1300.
[28] *Id.*
[29] *E.g.*, *Wyatt* v. *Stickney*, 325 F. Supp. 781, 334 F. Supp. 1341, 344 F. Supp. 373, 344 F. Supp. 387 (M.D. Ala. 1971–72), *aff'd sub nom. Wyatt* v. *Aderholt*, 503 F. 2d 1305 (5th Cir. 1974); *New York State Ass'n. for Retarded Children* v. *Rockefeller*, 357 F. Supp. 752 (E.D. N.Y. 1973); *Halderman* v. *Pennhurst*, C.A. No. 74–1345 (E.D. Pa., December 23, 1977); *Morales* v. *Turman*, 364 F. Supp. 166 (E.D. Tex. 1973), 383 F. Supp. 53 (1974); *Holt* v. *Sarver*, 309 F. Supp. 362, *aff'd*, 442 F. 2d 304 (8th Cir. 1971); *Gates* v *Collier*, 349 F. Supp. 881 (N.D. Miss. 1972); *Battle* v. *Anderson*, 376 F. Supp. 402 (E.D Okla. 1974); *Newman* v. *Alabama*, 349 F. Supp. 278 (M.D. Ala. 1972), *aff'd in part*, 503 F. 2d 1320 (5th Cir. 1974), *cert. denied*, 421 U.S. 948 (1975); *Pugh* v. *Locke*, 406 F. Supp. 318 (M.D. Ala. 1976); *Williams* v. *Edwards*, 547 F. 2d 1206 (1977).
[30] See *e.g.*, *Wyatt* v. *Stickney*, 325 F. Supp. 781, 334 F. Supp. 1341, 344 F. Supp. 373, 344 F. Supp. 387 (M.D. Ala. (1971–72), *aff'd sub nom. Wyatt* v. *Aderholt*, 503 F. 2d 1305 (5th Cir. 1974); *New York State Ass'n for Retarded Children* v. *Rockefeller*, 357 F. Supp. 752 (E.D. N.Y. 1973); *Davis* v. *Watkins*, 384 F. Supp. 1196 (N.D. Ohio 1974); *Morales* v. *Turman*, 364 F. Supp. 166 (E.D. Tex. 1973), 383 F. Supp. 53 (1974); *Horacek and U.S.* v. *Exon*, 357 F. Supp. 71 (D. Neb. 1973) (jurisdictional issues); *Gates* v. *Collier*, 349 F. Supp. 881 (N.D. Miss. 1972), *aff'd*, 501 F. 2d 1291 (5th Cir. 1974); *Welsch* v. *Likins*, 373 F. Supp. 487 (D. Minn. 1974), *aff'd in part*, 550 F. 2d 1122 (8th Cir. 1977); *Gary W .v. Stewart*, No. 74-2412 (E.D. La., filed July 26, 1976); *Inmates of Boys' Training School* v. *Affleck*, 346 F. Supp. 1354 (D.R.I. 1972); *Stachulak* v. *Coughlin*, 364 F. Supp. 686 (N.D. Ill. 1973); *Martarella* v. *Kelley*, 349 F. Supp. 575 (S.D. N.Y. 1972); *Nelson* v. *Heyne*, 491 F. 2d 352 (7th Cir.), *cert. denied*, 417 U.S. 976 (1974); *Halderman* v. *Pennhurst*, C.A. No. 74–1345 (E.D. Pa., December 23, 1977).

Theories of relief have varied, depending on the circumstances of the commitment. In the area of civil commitments, some courts have recognized an express "right to treatment" under the 14th amendment.[31] Others have found that the 8th amendment's prohibition against cruel and unusual punishment encompasses a right to "protection from harm," which ensures civilly committed persons the safeguards necessary to protect them from conditions that threaten their safety or guarantee their further deterioration.[32]

In the case of prison inmates and pretrial detainees, no right to rehabilitative treatment has ever been articulated. However, courts have consistently held that where conditions of confinement are "so base, inhumane, and barbaric" as to "shock the conscience of any right thinking person" they may constitute cruel and unusual punishment in violation of the 8th amendment.[33]

Regardless of the legal basis for relief, however, in every case in which the Justice Department has participated, whether on behalf of the civilly or criminally committed, the adjudicating court has held that the Federal Constitution guarantees institutionalized persons the minimal amenities of life which comprise a safe and humane environment. In the words of a prominent Federal judge, "a tolerable living environment is now guaranteed by law." [34]

As noted above, the Justice Department has also been involved in suits challenging the constitutionality of several states' civil commitments statutes. In some States, prior to Justice Department litigation, both the procedures and standards for committing persons were in clear violation of the 14th amendment's due process clause, as previously interpreted by the Supreme Court.[35] Nonetheless, in the absence of litigation challenging such laws, they remained in force. Only after the United States initiated or participated in suits attacking the constitutionality of such statutes, were they repealed. In every State in which the United States participated in litigation challenging a State commitment statute, the legislature responded by passing a new law, bringing into constitutional compliance the substantive and procedural standards for committing its citizens.[36]

2. Impact of Justice Department efforts

The results of Justice Department-assisted litigation on behalf of the institutionalized are impressive. Not only have courts given legal recognition to the fundamental rights of institutionalized individuals, but State and local officials under court order have made significant progress in implementing those rights.

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[31] See, *e.g.*, *Wyatt* v. *Stickney*, 325 F. Supp. 781, 334 F. Supp. 1341, 344 F. Supp. 373, 344 F. Supp. 387 (M.D. Ala. 1971–72) *aff'd sub nom. Wyatt* v. *Aderholt*, 503 F. 2d 1305 (5th Cir. 1974); *Davis* v. *Watkins*, 384 F. Supp. 1196 (N.D. Ohio 1974); *Morales* v. *Turman*, 364 F. Supp. 166 (E.D. Tex. 1973), 383 F. Supp. 53 (1974); *Welsch* v. *Likins*, 373 F. Supp. 487 (D. Minn. 1974).

[32] See, *e.g.*, *New York State Ass'n. for Retarded Children* v. *Rockefeller*, 357 F. Supp. 752 (E.D. N.Y. 1973).

[33] See, *e.g.*, *Gates* v. *Collier*, 501, F. 2d 1291, 1301; *Williams* v. *Edwards*, 547 F. 2d 1206 (5th Cir. 1977); *Holt* v. *Sarver*, 309 F. Supp. 362 (E.D. Ark. 1970), *aff'd* 442 F. 2d 304 (8th Cir. 1971); *Wright* v. *McMann*, 387 F. 2d 519 (2d Cir. 1967); *Newman* v. *Alabama*, 349 F. Supp. 278 (1972), *aff'd in part* 503 F. 2d 1320 (5th Cir. 1974); *Battle* v. *Anderson*, 376 F. Supp. 402 (E.D. Okla. 1974). —— F. Supp. —— (June 14, 1977).

[34] Circuit Judge Irving Kaufman, Book Review, 86 HARV. L. REV. 637, 639 (1973) citing *Wright* v. *McMann*, 387 F. 2d 519 (2d Cir. 1967)

[35] See, *e.g.*, *O'Connor* v. *Donaldson*, 422 U.S. 563 (1975); *In re Gault*, 387 U.S. 1 (1967).

[36] The States are Iowa, South Carolina, Pennsylvania, and Ohio. See cases cited note 10 *supra*.

The Mentally Ill and Retarded.—Since Judge Johnson issued his decree in *Wyatt* in 1971, patients at Alabama's mental hospitals have experienced a dramatic rise in the quality of their lives. In 1976, members of the State Mental Health Board (the *Wyatt* defendants) met at Partlow State School for the mentally retarded and declared that "what they saw was a different world" compared to four years earlier, and that conditions were "unbelievably better." [37] In a report submitted to the court in February 1977, the Justice Department reported that brutal conditions of confinement had been eliminated. Professor Gunnar Dybwad of Brandeis University, a former presidential consultant and nationally acknowledged expert in the field of institutional care, reported that "better food, better furnishings, improved medical care, increased availability of therapeutic services [and] more educational programs" were a direct result of the court's decree.[38]

In response to that decree, the State initiated a deinstitutionalization program which has reduced the population at the State hospital from 5,800 patients in 1972 to 1,800. According to Dr. Stanley Brodsky, a University of Alabama professor who testified in *Wyatt* and has continued to monitor implementation of the court decree, patients have been relocated in smaller nursing homes, schools for the mentally retarded, and community placement settings "where they can be served far better than in the huge institutional setting." [39] In addition, hospital administrators have adopted more selective procedures for admitting patients; instead of automatically committing persons in need of treatment or unable to care for themselves, "hospital personnel have gone into the community and have found placements for patients." [40]

The impact of the Justice Department's participation in the *Willowbrook* case is no less heartening. As a result of a consent decree agreed to by the parties and ratified by the court in 1975, the State has proceeded with a program for reducing significantly the population of Willowbrook. The New York Department of Mental Hygiene has established a metropolitan placement unit designed to provide community living arrangements for former Willowbrook inmates; since the decree was entered, approximately 400 persons have been removed from the 5,000-patient facility and relocated in community placements. Additional patients continue to be relocated in what one attorney has characterized as "good quality placements." [41]

The decrease in the number of Willowbrook patients, coupled with increased staff hiring provided by the consent decree, has resulted in cleaner, healthier conditions for those still residing in Willowbrook. Moreover, a steadily increasing number of patients now receive daily training. Finally, a review panel of mental retardation experts continues to monitor the State's compliance with the consent decree to ensure its continued implementation.[42]

As noted above, the Justice Department's actions challenging the constitutionality of various State commitment statutes have proven equally successful. In every case in which the Department has par-

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[37] Reese, *Things Unbelievably Better at Partlow, Director Says*, Alabama Journal, February 20, 1976 at 13, cols. 3 and 4.
[38] S. 1393 hearings, 200.
[39] S. 1393 hearings, 445.
[40] *Id.*
[41] Telephone conversation with Chris Hansen, June 16, 1977.
[42] Id.

ticipated, the State has acted to repeal the challenged statute and enact in its place a law consistent with constitutional guidelines articulated by the Supreme Court.[43]

Juveniles.—The implementation of the court's decree in *Gary W.*, the suit challenging Louisiana's practice of sending dependent children to out-of-State facilities, provides further visible proof of the efficacy of the Justice Department's assistance. Under the terms of the court order, the affected children are being returned to their home State, where a team of specialists from Louisiana State University Medical School evaluates each child previously placed in an out-of-State facility. Treatment programs are prescribed with the aim of placing children either with their families with services, or in the least restrictive setting within a reasonable proximity to their families. Plaintiffs' attorneys receive reports from the Medical School team and the State, describing the placement found for each child.[44] Stephen Berzon, lead attorney in the *Gary W.* case, stated to the Senate Constitution Subcommittee during the hearings on S. 1393:

> I can assure the Subcommittee that these children are being placed in foster homes, in group homes, or with families near their homes, and it can be done. It is because of the Justice Department's involvement in this case that we were able to accomplish this result.[45]

Prisoners.—Correctional and pretrial detention facilities have improved markedly as a result of suits brought or assisted by the Justice Department. As a result of the court order in *Gates* v. *Collier*,[46] seven of the most dilapidated camps at Mississippi's Parchman State Prison have been closed and replaced by modern facilities meeting recognized correctional standards. In the wake of the *Battle* case, in which the Justice Department participated as plaintiff-intervenor, Oklahoma State officials have initiated improvements in the facilities of the penitentiary system. Racial segregation has been eliminated; the most severe overcrowding has been reduced, and continuing efforts are under way to relocate 150 prisoners per month, until the population reaches design capacity.[47]

It should be noted that many of the orders imposed on corrections administrators have involved neither excessive time nor money. Some, for instance, have required merely that prison officials cease to engage in flagrantly unconstitutional practices, such as beating, shooting, and gassing inmates, censoring and suppressing mail, depriving prisoners of hygienic materials, and confining inmates in "dark-hole" isolation cells for prolonged periods. These abuses have also been curbed as a direct result of Justice Department litigation.

The success of the Attorney General's litigation program on behalf of the institutionalized, both on paper and in action, is eloquent testimony to the potential of the United States to serve as a catalyst in activating State officials to fulfill constitutional and Federal statutory duties to their institutionalized populations. In the words of Harry

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[43] Cases cited note 10 *supra*.
[44] Testimony of Stephen Berzon, legal director, Children's Defense Fund, S. 1393 hearings, 789.
[45] *Id.*
[46] 349 F. Supp. 881 (N. D. Miss. 1972), *aff'd*, 501 F. 2d 1291 (5th Cir. 1974).
[47] Telephone conversation with Paul Douglas, Office of Public Accommodations and Facilities, U.S. Department of Justice, Civil Rights Division, December 1, 1977.

Rubin, chairman of the Litigation Panel of the Mental Health Association, "litigation is the single most effective way of dealing with a continuing inertia among State bureaucracies, and the single most effective litigant * * * is the U.S. Department of Justice." [48]

V. Obstacles to Continued Litigation by the Justice Department

A. The Attorney General's Existing Authority to Enforce Constitutional Rights of Institutionalized Persons

The civilly committed.—The Attorney General has never been given express statutory authority to initiate or to intervene in litigation to enforce basic constitutional rights of institutionalized persons. For this reason, much of the Justice Department's litigative activity has been the result of requests by courts to appear as *amicus curiae*.[49] or through petitions to intervene in pending suits. While intervention has proven an effective means of securing constitutional rights for residents of institutions already the subject of pending litigation, it has limited the Attorney General in his selection of appropriate cases for Justice Department action. Since institutionalized citizens and their guardians are less likely to initiate suit than are other citizens, it is not uncommon for deplorable conditions to exist in institutions against which no suit has been filed. Under present law, however, the Attorney General's dependence on the selection of litigation by private parties constitutes a barrier to the most efficient and effective utilization of the Justice Department's resources.

Prisoners.—Similarly, in the field of correctional institutions no statute currently exists giving the Attorney General authority to redress widespread deprivations of prisoners' constitutional rights. However, under title III of the Civil Rights Act of 1964, 42 U.S.C. 2000b, the Attorney General is empowered to initiate suit to desegregate public facilities (including jails) operated by the States and their subdivisions. Similar statutory authority is given the Attorney General under title IX, 42 U.S.C. 2000h–2, to intervene in pending litigation seeking relief from the denial of equal protection on account of race, color, religion, sex, or national origin. Under these two statutes, the Attorney General has initiated and intervened in suits against penal facilities that continue to maintain segregated facilities or otherwise engage in practices that violate their inmates' rights to equal protection of the law.[50] Once admitted as a party to such actions, he has been able to append additional charges challenging the constitutionality of the conditions of confinement. However, where no evidence exists to suggest either racial segregation or other grounds for claiming a denial of equal protection, the Attorney General faces the same lack of statutory authority that exists with respect to institutions for the civilly committed.[51]

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[48] S. 1393 hearings, 452.

[49] As noted above, at least 10 Federal courts have called upon the United States to participate in litigation involving constitutional rights of the institutionalized. See testimony of Drew S. Days III, Assistant Attorney General, Civil Rights Division, U.S. Department of Justice. S. 1393 hearings, 33.

[50] See, *e.g.*, *Williams* v. *Edwards*, 547 F. 2d 1206 (5th Cir. 1977); *Gates* v. *Collier*, 349 F. Supp. 881 (M.D. Miss. 1972), *aff'd*, 501 F. 2d 1291 (5th Cir. 1974); *Battle* v. *Anderson*, 376 F. Supp. 402 (E.D. Okla. 1974), —— F. Supp. —— (June 14, 1977).

[51] See, for example, the complaint filed by the United States in *United States* v. *Elrod*, C.A. No. 76C4768 (N.D. Ill. filed December 29, 1976), challenging conditions in Cook County, Ill., jail. Defendants' motion to dismiss for lack of standing is pending.

B. SOLOMON AND MATTSON DECISIONS

As noted above, not all instances of institutional abuse are the subject of pending litigation by private parties. In recognition of the need to protect the rights of institutionalized individuals, even in the absence of pending litigation, the Attorney General last year filed *United States* v. *Solomon*,[52] a suit against Maryland's Rosewood State Hospital for the mentally retarded. In the complaint, the Attorney General alleged that officials of the 2,400-resident facility had failed to provide patients with a decent and humane environment, and that conditions at the hospital fell far below the minimal requirements of the Constitution. A similar suit, *United States* v. *Mattson*, was filed against Montana's Boulder River Hospital for the mentally retarded.[53] The defendants in both suits moved to dismiss the complaints on the ground that the Attorney General lacked statutory authority to initiate such actions.[54] Justice Department attorneys argued that the Attorney General had inherent authority to represent the interests of the United States in litigation to protect the constitutional rights of its institutionalized citizens. Rejecting this argument, the district court in *Solomon* granted the defendants' motion to dismiss. The district court in Montana followed the lead of the Maryland court and dismissed the Attorney General's complaint in *Mattson*. In October 1977, the Fourth Circuit Court of Appeals affirmed the district court decision in *Solomon*.[55]

The impact of the *Solomon* and *Mattson* decisions cannot be overstated. Not only do the two decisions pose effective bars to the Attorney General's initiation of litigation in the Fourth and Ninth Circuits, but they threaten to paralyze the Department's efforts throughout the Nation. The decisions promise to affect the Attorney General's litigation program in several important respects.

First, any new suit filed by the Department outside the circuits where *Solomon* and *Mattson* were decided will be subject to defendants' motions to dismiss, thus causing delay and, in all likelihood, an eventual decision adverse to the United States. Second, suits in which the United States is currently participating as *amicus* or plaintiff-intervenor will be disrupted by defendants' motions to dismiss the United States as a party, based on the *Solomon* and *Mattson* decisions. The Fourth Circuit's affirmance in *Solomon* strengthens those arguments. Third, defendants who were previously instituting voluntary changes to avoid suit by the Attorney General will have little incentive to continue, in the absence of any real threat of litigation. Finally, those institutions currently under investigation by the Justice Department will intensify their resistance to Department-initiated inspections, confident that the Attorney General is powerless to com-

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[52] 419 F. Supp. 358 (D. Md. 1976).

[53] C.A. No. 74-138-BU (D. Mont., September 29, 1976), *appeal docketed*, No. 76-3563 (9th Cir. October 19, 1976).

[54] Similar challenges have been made to the Attorney General's motions to intervene in pending litigation. While such challenges have proven unsuccessful so far, at least three justices of the Supreme Court have expressed doubt as to the legality of the Attorney General's intervention in such suits, absent explicit statutory authority. *In re Estelle*, 426 U.S. 925, 928 (1976) (Rehnquist, J. with whom the Chief Justice and Mr. Justice Powell joined, dissenting.)

[55] *United States* v. *Solomon*, C.A. No. 76-2184 (4th Cir., October 12, 1977).

el cooperation with investigators or compliance with the Constitu-
ion. Justice Department attorneys have already experienced such
ecalcitrance by some State officials.[56]

It is clear that without express statutory authority to secure judi-
ial enforcement of constitutional and Federal statutory rights of the
nstitutionalized, the Attorney General's litigation program cannot
urvive. By clarifying the Attorney General's authority to both inter-
vene and initiate such suits, S. 1393 allows the Nation's chief law
enforcement officer to address the problems of institutional abuse
in a systematic fashion, engaging in a program of selective litiga-
tion against those institutions where the most egregious constitutional
deprivations affect the largest number of people. In this manner,
S. 1393 permits the Attorney General to utilize the resources of the
Justice Department in the most effective manner possible.

VI. Need for Legislation

A. Congress' National Commitment to the Institutionalized

Over 1 million persons reside in institutions throughout the Na-
tion.[57] In recognition of the need to protect this large but quiescent
minority, Congress has, articulated in a variety of contexts, a na-
tional commitment to the adequate care of institutionalized citizens.
While recognizing that State and local governments bear primary
responsibility for administering the day-to-day operations of their
institutions, Congress has not hesitated to enact legislation to protect
institutionalized persons through Federal aid and advocacy. Thus in
such laws as the Developmentally Disabled Assistance and Bill of
Rights Act, 42 U.S.C. 6010 et. seq. (Public Law 94–103), the Re-
habilitation Act of 1973, 29 U.S.C. 794 (Public Law 93–112), the
Education of All Handicapped Children Act of 1975 (Public Law
94–142), the Juvenile Justice and Delinquency Prevention Act of
1974, 42 U.S.C. 5601 et. seq. (Public Law 93–415), the Omnibus Crime
and Safe Streets Act, 42 U.S.C. 3701 (Public Law 90–351), and the
Parole Commission and Reorganization Act of 1976, 18 U.S.C. 4201

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[56] In at least two States where the Attorney General had filed or authorized suit, the attitude of State officials altered radically following the Fourth Circuit's affirmance in *Solomon*. One such suit is *United States* v. *Elrod*, an action against officials in charge of the Cook County, Ill., jail. C.A. No. 76C4768 (N.D. Ill.) Before *Solomon*, the defendants were actively engaged in negotiating a settlement with Justice Department attorneys; after the Fourth Circuit's affirmance in *Solomon*, defendants terminated settlement negotiations and secured a protective order halting further discovery by the Attorney General.

Similar behavior was shown by Indiana officials in a suit authorized against that State's prison system. State officials initially indicated a willingness to negotiate with Justice Department lawyers, provided the latter supplied them with a detailed list of the allegedly unconstitutional conditions. Assistant Attorney General Days did so in a seven-page letter. State officials delayed responding to the letter until after the *Solomon* decision, when they replied with a one-page letter, summarily dismissing the Justice Department's allegations as unsubstantiated.

[57] A survey by the National Association of Superintendents of Public Residential Facilities showed that in 1975, 190,000 persons resided in public institutions for the mentally retarded. National Association of Superintendents, "Current Trends and Status of Public Residential Services for the Mentally Retarded," 10 (1975). A National Science Foundation committee reported that in 1976, approximately 363,000 children and adolescents resided in facilities for the emotionally disturbed, institutions for dependent and neglected children, training schools for delinquents, and institutions for the physically handicapped. Advisory Committee on Child Development of the National Science Foundation, "Toward a National Policy for Children and Families" (1976). According to a National Institute of Mental Health statistical analysis of 1975, at any one time, 200,000 persons are confined in State and county facilities for the mentally ill. (A Justice Department census of 1970 revealed that 113,000 of those in facilities for the mentally ill are 65 or older.) In December 1976, approximately 250,000 persons were housed in State prisons. These statistics do no more than confirm the acknowledged fact that a staggering number of persons, at some time in their lives, are wholly dependent on an institutional environment.

et seq. (Pub Law 94–233), Congress has passed legislation directly affecting or serving as models for the operation of State institutions. Congress also has committed billions of dollars in Federal funds to provide adequate care for the institutionalized.[58]

Notwithstanding this clear national commitment, both moral and fiscal, there is uniform agreement among those familiar with institutional environments that thousands of individuals continue to be subjected to conditions and practices flagrantly violative of their most basic human rights. In the words of Assistant Attorney General Drew S. Days III:

> The experience of the Department of Justice through its involvement in this litigation has shown that the basic constitutional and Federal statutory rights of institutionalized persons are being violated on such a systematic and widespread basis to warrant the attention of the Federal Government.[59]

The need for active Federal involvement is especially crucial in light of the demonstrated inability of State and local governments to insure adequate protection of their institutionalized citizens. The dozens of reported cases graphically documenting execrable institutional conditions and practices [60] belies any suggestion that State and local officials are independently capable of protecting their institutionalized residents from unconstitutional abuse. State attorneys general, bound by law to defend the very agencies responsible for maintaining such conditions, are neither willing nor able to serve as advocates for the institutionalized.[61]

In the words of one mental health expert, "100 years of bad institutional practices is long enough to wait for the States to have sorted out the problems for themselves." [62] The demonstrated failure of numerous states to fulfill their constitutional obligations to their institutionalized citizens, and the moral and financial commitment of

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[58] Some $7.5 billion in Federal funds are devoted to long-term care annually. S. 1393 hearings, 901, 906. A Government Accounting Office study of the Aid to Families with Dependent Children program revealed that 25 percent of foster children under the program are in institutions. Rosewood State Hospital for the mentally retarded, the subject of the recently dismissed *Solomon* suit, received $14 million in Federal funds during fiscal year 1974–75. S. 1393 hearings, 802. The United States has a 3-year grant to the Indiana Department of Corrections to provide medical services for its prison inmates. In suits brought against prisons and correctional facilities, LEAA funds have been made available to implement the terms of court decrees *e.g.*, *Gates* v. *Collier* 501 F. 2d 1291, 1320 (5th Cir. 1974). Recently, $3.5 million in Federal funds were made available to 16 States to begin community support programs for their previously institutionalized citizens. "Community Support Program Set To Aid Ex-Mental Patients," Washington Post, November 16, 1977, A28, col. 3.

[59] S. 1393 hearings 27.

[60] See cases cited note 29 *supra*.

[61] Only one State in the Nation, New Jersey, has a State-based independent advocacy unit empowered to sue other departments of the State to secure the rights of its institutionalized citizens. It is significant, however, that the head of New Jersey's Office of Public Advocacy publicly endorsed S. 1393 and its companion bill in the House. Statement of Stanley C. Van Ness, S. 1393 hearings, 979.

Only minor assistance can be expected from State advocacy programs authorized under the Developmentally Disabled Assistance and Bill of Rights Act. The inadequate funding for such programs leaves some States with no more than $20,000 per year to fund their advocacy projects. Conversation with Joe E. Vargyas, Director, A.B.A. Mental Disability Resource Center November 29, 1977. Furthermore, programs instituted under the Act cannot provide help to institutionalized, but nondevelopmentally disabled, juveniles, prisoners, the elderly, or mentally ill. The inescapable conclusion is that in the foreseeable future, institutionalized individuals will continue to depend on the U.S. Justice Department as the primary enforcer of their constitutional and Federal statutory rights.

[62] Testimony of Harry J. Rubin, chairman, Litigation Panel, Mental Health Association, S. 1393 hearings, 453–54.

the Federal Government to ensure a decent and humane environment for those citizens, makes Federal enforcement of such obligations both appropriate and necessary.

B. UNIQUE INABILITY OF INSTITUTIONALIZED PERSONS TO ASSERT THEIR OWN RIGHTS

The proliferation of Federal law and constitutional doctrine guaranteeing certain basic rights to institutionalized persons has done nothing to overcome their inherent inability to secure enforcement of those rights. For a variety of reasons examined below, the institutionalized are uniquely unable to protect their constitutional and Federal statutory rights without outside assistance.

First, many institutionalized persons are wholly unaware of their rights. Some are intellectually and emotionally incapable of understanding the concept of legal rights, while others are conditioned to accept their institutional environments without question. Many are inarticulate, and most are uneducated. Still others are deemed by law to lack the capacity to sue.

This ignorance of legal rights, or inability to articulate them, is compounded by the physical isolation in which most institutionalized persons live. Historically, mental and penal institutions have been located far from urban centers, inaccessible to friends, relatives, lawyers, and others who might assist in ensuring protection of institutionalized persons' rights. Few lawyers can afford the time and expense of travelling long distances to interview institutionalized clients; for obvious reasons, the institutionalized themselves are unable to seek outside help.

A third factor impairing the ability of the institutionalized to secure protection of their rights is a lack of money. Most institutionalized persons are poor; many are indigent; none possesses the resources necessary to finance litigation challenging systematic, institution-wide abuse. The cost of hiring experts to investigate, document, evaluate, and present testimony on the adequacy of institutional conditions is beyond the means of the most affluent institutionalized individuals.[63]

In light of the enormous resources required to mount and sustain protracted litigation necessary to secure institution-wide relief, it is not surprising that virtually every suit dealing with the rights of the mentally disabled has been brought with the assistance of the Justice Department.[64] It is equally noteworthy that despite the demonstrated ability of prisoners to file petitions challenging the constitutionality of their confinement, few, if any, suits securing widespread relief from unconstitutional prison conditions have been brought without the assistance of outside sources, most notably the Justice Department.[65]

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[63] The cost of mounting litigation challenging institutional practices is enormous. In *Newman* v. *Alabama*, 503 F. 2d 1320 (5th Cir. 1974), the Justice Department assisted suit successfully challenging the constitutionality of conditions in the Alabama State prison system, the court received 1,000 stipulations of fact, 5 volumes of photographs, 89 documentary exhibits, 15 depositions, and the testimony of eight nationally recognized experts in penology, psychology, and public health. The National Prison Project, which assisted in that suit, incurred $25,000 in out-of-pocket costs, not including salaries of the project's staff or local attorneys. S. 1393 hearings, 637. Approximately $50,000 has been spent to date in the *Willowbrook* suit, exclusive of attorneys' fees. S. 1393 hearings, 809.

[64] S. 1393 hearings, 187. And see cases cited note 30 *supra*.

[65] *E.g.*, *Gates* v. *Collier*, 501 F. 2d 1291 (5th Cir. 1974); *Newman* v. *Alabama*, 503 F. 2d 1320 (5th Cir. 1974); *Williams* v. *Edwards*, 547 F. 2d 1206 (5th Cir. 1977); *Battle* v. *Anderson*, 376 F. Supp. 402 (E.D. Okla. 1974); *Costello* v. *Wainwright*, 397 F. Supp. 20 (M.D. Fla. 1975), *aff'd*, 525 F. 2d 1239 (5th Cir. 1976).

Finally, a less obvious but no less powerful force tending to inhibit institutionalized persons from asserting their legal rights is their fear of retaliation. Completely dependent on their institutional environments, residents are particularly susceptible to intimidation and frequently afraid to voice their grievances. Parents and caring relatives of institutionalized individuals may be equally inhibited. Professor Dybwad,[66] testifying during the hearings on S. 1393, noted:

> Such families are afraid to complain about mistreatment suffered by their children. They may have been told that their complaints may cause institutional employees to quit their jobs, which would result in even less care being given at the institution. Or parents may have been told that if they are so dissatisfied, they should take their children home. They are being told: "We have plenty on the waiting list. We do not need your child here. If you do not like it, take him out." [67]

These four factors compel the conclusion that institutionalized persons cannot be expected to redress systematic deprivations of their basic rights without assistance. Of the three possible sources of such assistance—the legal services bar, private advocacy groups, and the Justice Department, only the last-mentioned offers any realistic hope for improving the plight of the institutionalized.

C. INADEQUACY OF LEGAL SERVICES AND PRIVATELY FUNDED PUBLIC INTEREST ADVOCACY GROUPS

The resources of the legal services and privately funded public interest bars are woefully inadequate to represent the needs of the Nation's institutionalized population. By its own estimate, the Legal Services Corporation's funding is insufficient to permit its attorneys to provide minimally adequate legal representation to the nearly 29 million people with incomes below the poverty line.[68] The difficulties involved in communicating with the mentally ill and retarded, the hardships associated with commuting long distances to confer with clients in remote locations, and the disproportionately large costs of bringing any suit challenging the adequacy of institutional care, make residents of institutions even less likely than other eligible recipients to receive the assistance of legal services attorneys.

The resources of nonprofit privately funded public interest groups are equally scant.[69] The Mental Health Law Project, the Nation's major public interest group in the field of mental health law, employs only six attorneys in the entire country.[70] The National Prison Project, the largest organization engaged in prisoners' rights litigation, has a staff of seven attorneys.[71] Of the 92 public interest law centers listed in a recent national study, only 6 had practices devoted principally to children's issues, and only a small portion of the resources of those 6 were devoted to institutionalized children. Of the 57 private firms or

[66] See text at notes 37–38 *supra*.
[67] S. 1393 hearings, 200.
[68] S. 1393 hearings, 813.
[69] *Id.*
[70] *Id.* at 804.
[71] *Id.* at 637.

ers identified as specializing in public interest work, only 6 spent
than 10 percent of their time on issues affecting the mentally
ired.[72]

ven when the public interest law firms attempt to represent the
itutionalized, they are hampered by shortages of money and man-
er. Many public interest projects are funded on a yearly basis,
s inhibiting managing attorneys from taking on litigation destined
xtend over a considerable period of time. In addition, the turn-
r rate among public interest lawyers is high; most change employ-
t within two or three years, further hindering efforts to sustain
tracted litigation.

hese limitations of resources, manpower, and continuity among
licly funded legal services and privately funded public interest
ocacy groups, leave no doubt that institutionalized persons must
elsewhere for legal representation. In the absence of a massive
unlikely infusion of funds to provide legal services to the insti-
ionalized, the vindication of their rights will continue to depend
the participation and resources of the Justice Department.

. APPROPRIATENESS OF JUSTICE DEPARTMENT ADVANCY TO ENFORCE FEDERAL RIGHTS OF THE INSTITUTIONALIZED

In the past, Congress has not hesitated to give the Attorney Gen-
l statutory authority to engage in litigation to secure citizens' basic
nstitutional rights where evidence has tended to show a widespread
nial of such rights. Thus, in the context of discrimination in voting,
ucation, employment, housing, and public services, Congress has
acted legislation similar to S. 1393, authorizing the Attorney Gen-
l to redress "patterns or practices" of widespread abuse.[73] The au-
ority proposed in S. 1393, therefore, is neither novel in concept of
precedented in use. Moreover, the results of the Attorney General's
igative efforts on behalf of the institutionalized confirm both the
ed for and efficacy of such efforts.[74]

A number of factors make the contribution of the Attorney General
unique and invaluable one. First, as noted above, private litigants,
en with the assistance of legal services and public interest groups,
nnot marshal the resources necessary to mount a full-scale attack
system-wide institutional abuse.[75] The Justice Department, how-
er, does possess such resources. The Department can call upon the
BI to conduct thorough investigations of institutions, taking photo-
raphs and collecting relevant data on institutional conditions. It
as ready access to the expertise of other Federal agencies, including
e Department of Health, Education, and Welfare, the Bureau of
risons, and the Law Enforcement Assistance Administration, whose
xperts can evaluate the data collected by the FBI or make independ-
nt inspections. From its past experience in the field, the Justice De-

[72] *Id.* at 813.
[73] *E.g.*, title VI of the Civil Rights Act of 1960, 42 U.S.C. 1971(c) (voting); title IV of
e Civil Rights Act of 1964, 42 U.S.C. 2000c–6(a) (education); title VII of the Civil
ights Act of 1964, 42 U.S.C. 2000e–6(a) (employment); title II of the Civil Rights Act
1964, 42 U.S.C. 2000a–5(a) (public accommodations); title III of the Civil Rights Act
1964, 42 U.S.C. 2000b(a) (public facilities); title VIII of the Civil Rights Act of 1968,
U.S.C. 3613 (housing). For additional statutes, see the Opinion of the Congressional
esearch Service of the Library of Congress, reprinted in Appendix B.
[74] See II.B.2. *supra.*
[75] See note 57 *supra.*

partment is familiar with and has access to nationally recognized experts in mental health, mental retardation, penology, and public health, and can rely upon such experts for accurate and responsible assessments of the adequacy of institutional conditions. All of these factors contribute to the Department's unique ability to develop a full and fair factual record for the court.[76]

A second important contribution of the Justice Department to litigation on behalf of the institutionalized is its staff of highly skilled attorneys. Their familiarity with the substantive and procedural issues involved in such litigation gives them an expertise unmatched by less experienced counsel. Judges, litigants, and other attorneys who have observed the efforts of Justice Department lawyers have been unstinting in their praise. One judge, The Honorable Nicholas J. Walinski, made the following observations regarding the performance of Justice Department attorneys in *Davis* v. *Watkins*:[77]

> They brought with them the underlying technical expertise necessary to structure this action for trial. They were familiar with and had access to expert witnesses with experience in the treatment and care of mental patients institutionalized in large state facilities. They could draw upon a bank of information maintained by the Department through its involvement in a number of other cases around the country. They had access to in-house personnel necessary for the laborious job of culling through reams of material secured in the process of discovery. With their assistance the parties were able to enter into approximately 132 pages of stipulations which had the effect of cutting the trial to five (5) calendar days. (Without the assistance of such litigators experienced in a highly technical field, I could otherwise anticipate such an action stretching over months of testimony.)[78]

In addition to its superior resources and skill, the Justice Department brings credibility to the proceedings. The mere presence of the Department alerts a court that conditions in a given institution are sufficiently serious and pervasive to warrant the attention of the Attorney General. The selective procedures used to choose cases worthy of Justice Department involvement, and the limitation of such involvement to patterns or practices of abuse, ensure that the Department's resources will be directed to cases designed to secure relief for large numbers of individuals. The relief thus secured serves as a national precedent, alerting States across the Nation to minimum

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[76] Stephen Berzon, commenting upon the Justice Department's role in the *Gary W.* suit, noted:

> We had very little idea what was going on behind those closed fences and institutional walls. The Justice Department was able to hire panels of experts and through the discovery process to have those experts visit the institutions.

S. 1393 hearings, 789.

The Honorable Nicholas J. Walinski, who adjudicated *Davis* v. *Watkins*, noted of the Justice Department attorneys:

> They * * * managed to get the FBI [into the institution] when we were having problems. That was resisted all the way along by the institution. They had access to experts who were well versed in the field of what should be done in a mental institution. They were able to produce those for us, which [neither] the State [nor] local attorneys could * * * have * * * done * * * . They were very helpful.

S. 1393 hearings, 548.

[77] 384 F. Supp. 1196 (N.D. Ohio 1974).

[78] S. 1393 hearings, 552.

constitutional standards, and enabling them to take prophylactic measures to ensure compliance with such standards, thereby avoiding similar suits against their own institutions. In sum, the presence and participation of the Justice Department serves to highlight the important cases, not only for courts adjudicating them but for State and local officials who will ultimately be held accountable for the conditions and practices in their institutions.

The Department's ability to streamline complex litigation results in a notable conservation of judicial resources. By ensuring a well prepared, tightly structured case, the Department can speed the litigation process and facilitate settlement, thus saving weeks or months of discovery and trial. Additionally, in suits alleging a pattern or practice of institutional violations, the court can consolidate numerous individual complaints into a single action, to be tried and disposed of in one proceeding. This, in fact, is what courts have done.[79] Thus, the participation of the Justice Department in such "pattern or practice" suits both accelerates the litigation and avoids piece-meal disposition of individual complaints, thereby guaranteeing the most effective use of limited judicial resources.

A fifth and final contribution of the Justice Department to litigation on behalf of the institutionalized is the stability and continuity it brings to the litigation process. Defendants who would otherwise engage in dilatory tactics, in an effort to stall resolution of a case until plaintiffs' resources were exhausted or their public interest attorneys had moved on to other employment, are less inclined to employ such practices against the Justice Department. This disincentive for prolonging litigation can facilitate early settlement. Moreover, once relief is secured, the Justice Department has the staying power to ensure that a court's decree will be implemented. Since the relief ordered frequently takes months and sometimes years to achieve, it is imperative that the court be able to rely on the continuing presence of the Department to monitor implementation of the decree and secure compliance with constitutional mandates.

VII. Constitutionality

No responsible argument can be offered to challenge the constitutionality of S. 1393. Since several constitutional questions have been raised, however, their discussion may be appropriate.[80]

Section 5 of the 14th amendment specifically authorizes Congress to "enforce, by appropriate legislation, the provisions of this article." As noted earlier, in other contexts Congress has repeatedly acted under the power conferred in Section 5 to grant the Attorney General statutory authority to redress patterns or practices of unconstitutional act' ity.[81] Similarly, in authorizing the Attorney General to enforce rights, privileges or immunities secured or protected by the Constitution or laws of the United States, this bill is not intended to expand the present

[79] In a recent suit challenging conditions in Rhode Island's prison system, the court consolidated 150 *pro se* petitions, disposing of them in a single action. *Ross* v. *Noel*, C. A. No. 75-032 (D.R.I.). In a Texas case, eight separate complaints have been consolidated for trial in a single suit *Ruiz* v. *Estelle*, C. A. No. 5523 (E.D. Tex.). Similar consolidation was possible in *Pugh* v. *Locke*, 406 F. Supp. 318 (M.D. Ala. 1976) (Alabama prison suit).

[80] For further discussion and confirmation of the constitutionality of the bill, see the opinion prepared by the America Law Division of the Congressional Research Service of the Library of Congress, reproduced in Appendix B.

[81] See note 73 *supra*.

Congressional authority over State action arising from section 5 of the 14th amendment. The authority granted to the Attorney General is limited to enforcement against the State of those laws governing State conduct that Congress has constitutional authority to prescribe. No successful challenge has ever been made to the constitutionality of such grants.

The challenge occasionally raised to the constitutionality of S. 1393 is grounded in the 10th amendment. The amendment provides that "[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States, respectively, or to the people." Because the institutions subject to suit under S. 1393 will be under the control of the States or their political subdivisions, some have argued that the bill constitutes an unconstitutional delegation of power to the Federal Government to administer State and local institutions.

This argument misconstrues both the Constitution and the authority granted by S. 1393. First, the 10th amendment's reservation of powers to the States does not imply a reserved right to violate the Federal Constitution; nor does it relieve any State of a single obligation imposed by the Constitution and Federal laws. On the contrary, article VI of the Constitution expressly states that the Constitution and laws of the United States shall be "the supreme law of the land . . . any thing in the constitution or laws of any State to the contrary notwithstanding." It is clear, therefore, that the obligation of every State and local government to comply with the Constitution is in no way affected by the 10th amendment.

Nor is the grant of authority to the Attorney General to enforce compliance with the Constitution through litigation an inappropriate delegation of power to the Federal Government. Contrary to the assertions of those unfamiliar with such litigation, Federal courts called upon to adjudicate claims of unconstitutional institutional conditions have resisted involvement in the day-to-day operations of State and local institutions *beyond that which has been necessary to ensure constitutionally adequate conditions.*[82] In fact, Federal courts have punctiliously avoided precipitous intervention in State affairs, allowing defendants the greatest possible leeway in devising methods to bring their institutions up to constitutionally acceptable standards.[83] Only when State officials have failed to comply with constitutionally mandated judicial orders have Federal courts imposed specific requirements for institutional operations. Even these, how-

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[82] It bears emphasizing that the relief ordered by Federal courts, though extensive, has sought *not* to transform the institutions in question into ideal places of habilitation, but only to ensure that conditions therein met minimum standards of decency required by the Constitution. As stated by Judge Wisdom in *Wyatt* v. *Aderholt:*

> The patients here do not seek to *guarantee* that all patients will receive all the treatment they need or that may be appropriate to them. They seek only to insure that conditions in the State institutions will be such that the patients confined there will have a *chance* to receive adequate treatment. [Emphasis in original.]

503 F. 2d at 1316.

In the context of prison conditions, courts have similarly limited relief under the 8th amendment to measures designed to remedy conditions which "present a grave and immediate threat to health or physical well being," "shock the conscience," or "offend contemporary concepts of decency and human dignity and precepts of civilization which we profess to possess." *Gates* v. *Collier, quoting Campbell* v. *Beto,* 460 F. 2d 765, 768 (5th Cir. 1972); *Jackson* v. *Bishop,* 404 F. 2d 571, 579 (8th Cir. 1968).

[83] In *Wyatt,* for example, the court did not take immediate steps to compel State officials to improve existing conditions at Partlow State Hospital for the mentally retarded. Instead, it directed the Alabama Department of Mental Health to design its own plan for upgrading conditions to meet constitutional standards. 325 F. Supp. 781, 785–86 (M.D. Ala. 1971). Only after two deadlines had passed without any signs of progress did the court itself, relying on proposals of counsel for all parties and amici, define the minimal constitutional standards to which defendants would be held.

ever, have been no more than what the expert testimony at trial, previous cases, and nationally recognized standards have indicated to be minimally acceptable conditions under the provisions of the Constitution. It is clear, therefore, that both the primacy of the Federal Constitution, and the authority of Congress to implement its provisions by legislation such as S. 1393 is beyond dispute.

VIII. Standards

A. STANDARDS FOR FILING SUIT

A letter reproduced in Appendix A of this report from Drew S. Days III, Assistant Attorney General in charge of Civil Rights, outlines the standards used by the Attorney General in the past to determine when participation by the Justice Department is appropriate in suits alleging a pattern or practice of unconstitutional institutional conduct. As noted in the letter, the Attorney General's participation in such suits has been limited to cases in which he has found: (1) significant numbers of institutionalized individuals, being subjected to (2) broadly applicable policies or practices, which (3) result in severe deprivations of fundamental constitutional and Federal statutory rights, and (4) there is no realistic prospect of relief for such individuals without the assistance of the United States.

As Assistant Attorney General Days noted in his testimony before the Constitution Subcommittee, the Attorney General has, for years, been entrusted with the responsibility of determining what constitutes a pattern or practice of unconstitutional conduct sufficient to warrant the involvement of the Federal Government.[84] The committee believes he is equally capable of exercising such authority in the context of institutionalized persons' constitutional and Federal statutory rights.

B. STANDARDS FOR RELIEF

As noted in Assistant Attorney General Days' letter, there is no dearth of precedent for judges to follow in fashioning equitable relief for constitutional violations; they have been doing so for years and will continue to do so in any suit brought to redress unconstitutional institutional conditions.[85] Nor are courts ignorant of nationally recognized standards on which to base relief. Groups such as the American Public Health Association, the American Correctional Association, the National Sheriffs' Association, the American Association on Mental Deficiency, and others, publish standards outlining minimally acceptable environmental conditions in correctional and mental health facilities;[86] courts have used such standards regularly as guidelines in determining constitutionally adequate conditions. The ability of the Attorney General to make available to courts both the testimony of

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[84] S. 1393 hearings, 21, 28.

[85] The Supreme Court has repeatedly emphasized the flexibility of such concepts as "due process" and "cruel and unusual punishment". In *Trop* v. *Dulles*, for example, the Court noted that the 8th amendment "must draw its meaning from the evolving standards of decency that mark the progress of a maturing society." 356 U.S. 86, 100–01 (1958). The fact that the amendment's prohibition against cruel and unusual punishment must be flexible enough to reflect these evolving standards of decency does not relieve courts of the obligation to construe it, nor states of the obligation to comply with the amendment as construed.

[86] See S. 1393 hearings, 37. It is noteworthy that in every case in which the Attorney General has participated, the challenged institutional conditions have failed to meet *any* nationally recognized standard.

expert witnesses familiar with institutions across the Nation and the published standards of nationally recognized organizations ensures that judicial determinations of constitutionally acceptable minima will be based on authoritative and nationally acknowledged norms.

IX. Federal Prison System

The committee is quite concerned that the Federal prison system, which is in fact under the supervision of the Attorney General, is not without its shortcomings. While this legislation gives the Attorney General pattern and practice authority to proceed against State prison systems alleged to be in violation of the Constitution, the Attorney General must take positive and forceful action to assure that the Federal prison system itself is in compliance with the Constitution.

The Attorney General should consider the problem of bringing the Federal prison system into compliance with the Constitution as high if not a higher priority than compliance by State and local governments. The committee believes that the Federal Prison Service Policy Statements and the Draft Federal Standards for Corrections would, if properly enforced, make significant progress toward this end. Although the Bureau of Prisons has the internal mechanism to provide for the proper implementation of these standards and policies, the committee believes that attorneys in the Civil Rights Division should be supervising implementation of those standards to insure that the Federal prison system is held to the same standards as they seek for State and local systems. The committee will consider, if necessary, amending the Department of Justice authorization bill next year to require that there be an equal allocation of Civil Rights Division resources on the Federal prisons as well as State and local facilities.

X. Conclusion

Neither the Attorney General nor the committee suggest that litigation by the Justice Department is an ideal method for eradicating widespread institutional abuse. It is costly, time consuming, and disruptive of the operation of State and local governments. Experience has shown, however, that it is also the single most effective method for redressing systematic deprivations of institutionalized persons' constitutional and Federal statutory rights. Until such time as every State and political subdivision assumes full responsibility for protecting the fundamental rights of its institutionalized citizens, the need for Federal enforcement of those rights will continue.[87]

Congress has repeatedly authorized litigation by the Attorney General to redress patterns or practices of unconstitutional activity directed against groups ill-equipped to enforce their own rights. The special disabilities of the institutionalized make them a prime candidate for advocacy by the Attorney General. Poor, isolated, usually inarticulate, frequently incompetent, and wholly dependent on their institutional environments, they lack both the knowledge of their legal

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[87] In the words of the Honorable Richard T. Rives, former chief judge of the U.S. Court of Appeals for the Fifth Circuit:

> I look forward to the day when the State and its political subdivisions will again take up their mantle of responsibility, treating all of their citizens equally, and thereby relieve the Federal Government of the necessity of intervening in their affairs. Until that day arrives, the responsibility for this intervention must lie with those who through their ineptitude and public disservice have forced it.

Dent v. Duncan, 360 F. 2d 333, 337–38 (5th Cir. 1966).

rights and the means to enforce them. Legal services and public interest attorneys lack the financial resources and personnel needed to sustain the protracted litigation required to redress system-wide abuse. In the absence of other available assistance, the only realistic source of hope for the institutionalized lies with the U.S. Attorney General.

The litigative efforts of the Attorney General to date, undertaken without express statutory authority, provide conclusive proof of the efficacy of Justice Department involvement in litigation on behalf of the institutionalized. The significant visible improvements in correctional and mental health facilities throughout the Nation, the heightened sensitivity of the citizenry to the plight of institutionalized persons, and the efforts of some State and local officials to achieve voluntary compliance with minimum constitutional standards are directly attributable to the Attorney General's litigation program.

The resources and skill which the Attorney General brings to such litigation cannot be matched by private counsel. The Justice Department's access to the investigative resources of the FBI, the technical advice of other Federal agencies, and the professional assistance of nationally recognized experts in the field of institutional care, enable it to develop a comprehensive record for adjudicating courts. The experience and expertise of Justice Department attorneys guarantees that the litigation will be handled professionally, with a minimal expenditure of judicial time and resources. The presence of the Attorney General lends credibility to the proceedings and alerts courts, litigants, and the public to the seriousness of the charges. Finally, the Department provides the stability and continuity necessary to see litigation to its conclusion and to monitor implementation of court decrees. These factors combine to make the Attorney General an invaluable aid to the judiciary and an indispensable advocate for the institutionalized.

In hundreds of institutions across the Nation, there is no discernible evidence of Congress' professed commitment to the adequate care of its institutionalized citizens. In the back wards of State mental hospitals and the crowded cells of State prisons and county jails, the constitutionally guaranteed right to a decent and humane environment has yet to be given practical effect. The demonstrated inability of institutionalized persons to redress systematic deprivations of their fundamental rights, and the proven ability of the Attorney General to act as an effective advocate on their behalf, convinces the committee that the litigation program undertaken by the Justice Department to date should be encouraged and continued. By codifying the authority of the Attorney General to initiate and to intervene in litigation designed to redress widespread deprivations of institutionalized persons' fundamental Federal rights, S. 1393 constitutes a modest but necessary step toward fulfilling that national commitment.

XI. Section-by-Section Analysis

A. SECTION 1: AUTHORITY TO INITIATE SUIT

Section 1 grants the Attorney General authority to initiate litigation in Federal district court when he has reason to believe that a State or political subdivision, or an agent thereof, is engaged in a

pattern or practice of depriving persons residing in institutions (as defined in section 5) of rights secured by the Constitution and Federal laws, subject to the limitation below concerning correctional facilities.[88] This grant is similar to that given the Attorney General under title VI of the Civil Rights Act of 1960 (voting discrimination), titles II and VII of the Civil Rights Act of 1964 (public accommodations and employment discrimination), title III of the Civil Rights Act of 1964 (segregation in jails), title VIII of the Civil Rights Act of 1968 (housing discrimination), and section 122(c) of the State and Local Fiscal Assistance Act of 1972 (discrimination in programs receiving Federal assistance). Under these provisions, courts have consistently held that the decision of the Attorney General to initiate such pattern or practice litigation is not a proper subject for judicial inquiry.[89] The committee intends that under the grant of authority in section 1, the decision of the Attorney General to file suit shall be similarly unreviewable.

The Attorney General's authority to litigate is limited to situations in which he has reasonable cause to suspect a "pattern or practice" of institutional abuse in violation of the Constitution or Federal laws. This "pattern or practice" authority has been interpreted by the courts in other contexts, and the committee intends the language here to be construed in conformity with established precedent.[90] Thus, the Attorney General does not have authority under this bill to redress isolated instances of abuse or repeated violations against an individual. Rather, the Attorney General's authority is limited to cases where unconstitutional or illegal practices are widespread, pervasive, and systematic, and adversely affect significant numbers of institutionalized individuals. Two amendments to section 1 were accepted during Judi-

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[88] No attempt has been made to distinguish between voluntarily and involuntarily institutionalized individuals. The committee believes that several considerations make such a distinction inadvisable.

First, Congress' professed national commitment to the adequate care of the institutionalized has never been limited to protecting those involuntarily confined, but has extended to securing decent and humane living conditions for all institutionalized citizens.

Second, in the case of mentally retarded individuals and children, concepts of voluntariness have no practical meaning. Placed "voluntarily" by their parents or guardians, most exercise no independent choice in the decision; many are incapable of contemplating such a choice, and most have no alternative shelter. See *Halderman* v. *Pennhurst*, C.A. No. 74-1345 (E.D. Pa. December 23, 1977, unpublished opinion at 38).

Third, persons who voluntarily enter institutions to receive treatment for mental or emotional disorders often are subsequently committed as involuntary patients. Most States provide that even voluntary patients must observe a waiting period before leaving an institution. S. 1393 hearings, 112–15.

Finally, most institutions do not segregate voluntary and involuntary residents. *See Halderman*, v. *Pennhurst*, *supra* at 17; *NYSARC* v. *Rockefeller*, 357 F. Supp. 752, 756 (E.D. N.Y. 1973). All share the same living areas, sanitation facilities, and sleeping quarters, eat the same food, receive similar medication, and are subject to the same institutional conditions and practices. Thus, considerations of both policy and practicality militate against differentiating between voluntary and involuntary residents.

It is significant that courts have not made such a distinction in ordering relief for institutionalized plaintiffs. Although the distinction has occasionally affected the constitutional theory under which relief has been granted, it has rarely, if ever, affected the scope of such relief. More important, it has no bearing whatsoever on the efforts of the Attorney General to secure for all institutionalized individuals the full measure of *whatever rights they may have* under the Constitution and Federal laws.

[89] See, e.g., *United States* v. *Greenwood Municipal Separate School District*, 406 F. 2d 1086 (5th Cir. 1967) (title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000c-6); *United States* v. *Bob Lawrence Realty, Inc.* 474 F. 2d 115 (5th Cir. 1973), *cert. denied*, 414 U.S. 826 (1973) (title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601, *et seq.*).

[90] *United States* v. *Ironworkers Local 86*, 443 F. 2d 544 (9th Cir.), *cert. denied*, 404 U.S. 984 (1971) (employment); *United States* v. *Hunter*, 459 F. 2d 205 (4th Cir.), *cert. denied* 409 U.S. 934 (1972) (housing).

ciary Committee consideration of the bill in order to make clear that minor or isolated acts or injuries are not intended to be the subject of litigation under this bill. As amended, the bill authorizes actions only where persons residing in an institution are subjected to "extraordinary or flagrant conditions (conditions which are willful or wanton or conditions of gross neglect) . . . causing them to suffer grievous harm." These additional descriptive terms are intended to parallel the limitations that have been applied to actions brought under 42 U.S.C. 1983 and similar rights enforcement statutes.[91]

During Judiciary Committee consideration of the bill, an amendment also was accepted which will further limit actions to enforce the rights of persons residing in "any jail, prison, or other correctional facility, or any pretrial detention facility," as defined in section 5(a)(3). Relief will be available to such persons through actions brought under this bill's authority only if the persons are subjected to conditions which deprive them of "rights, privileges, or immunities secured or protected by the Constitution of the United States"; relief in such actions will not be available on the basis of the broader term "Constitution *or laws* of the United States" which applies to persons residing in the other institutions. The purpose of this amendment is to preclude suits under this bill on behalf of persons in jails, prisons, correctional facilities or pretrial detention facilities arising solely from Federal statutory violations rather than Constitutional violations.

In order to initiate litigation under section 1, the Attorney General must have reason to believe that a State or political subdivision, or an agent thereof, is engaged in the illegal pattern or practice of activity. While this does not eliminate the possibility of actions by the Attorney General that affect private institutions performing a public function [92] or under contract to the State, it is intended to preclude suits against small private operations. This intention is made explicit in section 5(b).

Section authorizes the Attorney General to seek "such equitable relief as may be appropriate" to ensure the full enjoyment of any rights, privileges or immunities secured by the Constitution and Federal laws. Similar language is contained in other civil rights statutes authorizing actions by the Attorney General,[93] and has been interpreted by the courts to permit the fashioning of appropriate equitable relief. In the past, such relief has included injunctions against the continuance of unconstitutionally cruel practices, affirmative orders requiring the

[91] In a case brought under 42 U.S.C. 1983, for example, Judge Stevens, prior to his appointment to the Supreme Court, noted the problems of reading section 1983 expansively and stressed the importance of restricting suits brought under that section to those involving significant Federal questions:

> The Federal interest in conserving Federal judicial resources for litigation in which significant Federal questions are at stake favors a construction of the Civil Rights Act which will not enlarge it to provide an alternative means of processing ordinary Federal common law tort claims. *Kimbrough* v. *O'Neil*, 523 F.2d 1057, 1066 (7th Cir. 1975).

[92] For example, in the *Gary W.* case, more than 40 private institutions were named as defendants, along with the State of Louisiana. Some of the facilities housed fewer than 25 children. All, however, received children from the State agency responsible for placing such youngsters, and it was the *State's* practice of sending children to such substandard, inadequate facilities that constituted a pattern of unconstitutional conduct.

[93] See, e.g., 42 U.S.C. 2000a–5 (discrimination in public accommodations); 42 U.S.C. 2000b (discrimination in public facilities); 42 U.S.C. 2000c–6 (desegregation of public schools); 42 U.S.C. 2000e–6 (discrimination in employment); 42 U.S.C. 3613 (fair housing).

upgrading of physical facilities necessary to meet constitutionally minimal standards, orders mandating the establishment of minimum nutritional programs, and the hiring of additional staff in sufficient numbers to provide adequate supervision of residents.[94] In light of existing precedent for this authority, the Attorney General's demonstrated ability to exercise it, and the desirability of allowing courts some flexibility in fashioning equitable relief, the committee believes this grant is an appropriate one.[95]

The requirement that the Attorney General personally sign the complaint is intended to ensure that any decision to initiate suit shall be made by the Attorney General himself. This provision is also modeled after existing legislation and is included in recognition of the important issues inherent in litigation by the Federal Government against State and local officials.

Finally, it should be emphasized that under section 1, the Attorney General's authority extends to initiating suit "for or in the name of the United States," in order to represent the national interest in securing constitutionally adequate care for institutionalized citizens. As a representative of the United States, the Attorney General does not directly represent any institutionalized plaintiffs, and the authority granted him is in no way intended to preclude private litigants from enforcing any cause of action they may have under existing or future law.

B. SECTION 2: PRE-SUIT NOTIFICATION AND NEGOTIATION

The broad purpose of section 2 is to ensure that before litigation is undertaken by the Attorney General pursuant to section 1, State and local officials will be adequately apprised of the Attorney General's concerns and will have an opportunity to consult with him or his designee before any complaint is filed.

Under this section, the Attorney General must at least 30 days before filing suit notify in writing not only the institution director but the governor and attorney general of the State or local officials in analogous positions. Such notification must include both the legal bases for the alleged deprivations of Federal rights and the facts underlying those claims. The notification must also include the measures believed necessary to remedy the deprivations. The committee realizes that before a complaint is filed and discovery conducted, it may be impossible for the Attorney General to specify the precise measures required

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[94] In many instances, the relief ordered has required the expenditure of State funds. Courts have repeatedly held that such relief is not barred by the 11th amendment. As stated by Judge Wisdom in *Wyatt* v. *Aderholt*:

> It goes without saying that state legislatures are ordinarily free to choose among various social services competing for legislative attention and state funds. But that does not mean that a state legislature is free, for budgetary or any other reasons, to provide a social service in a manner which will result in the denial of individuals' constitutional rights. 503 F. 2d at 1314–15.

See also *NYSARC* v. *Rockefeller*, 357 F. Supp. 753, 765 (E.D. N.Y. 1973); *Morales* v. *Turman*, 383 F. Supp. 53, 60 (E.D. Tex. 1974).

For cases sanctioning mandatory expenditures of state funds to upgrade penal facilities, *see, e.g.*, *Cruz* v. *Beto*, 405 U.S. 319 (1972); *Johnson* v. *Avery*, 393 U.S. 483 (1968); *Campbell* v. *Beto*, 460 F. 2d 765 (5th Cir. 1972); *Holt* v. *Sarver*, 309 F. Supp. 362 (E.D. Ark. 1970), *aff'd* 442 F. 2d 304 (8th Cir. 1971).

For similar cases in the context of juvenile detention facilities, *see e.g.*, *Nelson* v. *Heyne*, 491 F. 2d 352 (7th Cir. 1974); *Martarella* v. *Kelley*, 359 F. Supp. 479 (S.D. N.Y. 1972); *Inmates of Boys' Training School* v. *Affleck*, 346 F. Supp. 1354 (D.R.I. 1972); *Morales* v. *Turman*, 364 F. Supp. 166 (E.D. Tex. 1973).

[95] For further discussion of the scope of relief sought by the Attorney General and granted by courts in past litigation on behalf of the institutionalized, see the letter from Assistant Attorney General Drew S. Days III to Senator Birch Bayh, reprinted in Appendix A.

to correct the alleged abuses. Further, the committee believes it is advisable to give States the primary responsibility for correcting unconstitutional conditions in their own institutions. In the face of good-faith efforts by appropriate State and local officials to comply with constitutionally required minima, the committee deems it preferable to give such officials the opportunity to fashion their own specific solutions.

In addition to notifying officials of the alleged deprivations, the Attorney General or his designee is required under section 2 to make reasonable efforts to consult with such officials regarding appropriate action. The committee intends that unless State officials prove unwilling to consult with the Attorney General or his designee, such consultations will be routine procedure in every suit filed under the bill. The content of such consultation should include, but not be limited to, apprising appropriate officials of financial, technical, or other assistance which may be available from the Federal Government. It has been the experience of the Justice Department in past litigation that many States which could qualify for Federal funds have not been receiving any at the time suit was filed.[96] Where the receipt of such funds can significantly aid States in implementing constitutionally mandated reforms, it is imperative that appropriate officials be made aware of the availability of such assistance. In addition, it is anticipated that the Attorney General shall make available to States desirous of using them, the consultation services and technical guidance of other Federal agencies, including the Department of Health, Education, and Welfare, the Bureau of Prisons, and the Law Enforcement Assistance Administration.

The Attorney General must also certify, when filing suit under section 1, that he is satisfied that appropriate officials have had a reasonable time to correct the alleged deprivations and have not adequately done so. This provision is not intended to require the Attorney General to wait months or years between the initial notification and the filing of suit. The Attorney General need only be satisfied that the unconstitutional or otherwise illegal conditions have existed for a sufficient period of time that State and local officials could have and should have taken measures to remedy such violations and have failed to do so. The committee does not intend, however, that the Attorney General shall initiate litigation against a State or local government which is fully aware of the challenged conditions or practices in its institutions, concedes their unconstitutionality, and is presently engaged in active remedial measures which eliminate the need for litigation by the Attorney General.[97]

Finally the Attorney General must certify that such an action is of general public importance and will materially further the vindication of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States. As in section 1, the requirements that the Attorney General sign the certification is designed to ensure that such decisions receive the personal attention of the highest acting officials of the Justice Department.

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[96] See, *e.g.*, *Wyatt* v. *Stickney*, 325 F. Supp. 781, 334 F. Supp. 1341, 344 F. Supp. 373, 344 F. Supp. 387 (M.D. Ala. 1971–72), *aff'd sub nom. Wyatt* v. *Aderholt*, 503 F. 2d 1305 (5th Cir. 1974); *Gates* v. *Collier*, 349 F. Supp. 881 (N.D. Miss. 1972), *aff'd*, 501 F. 2d 1291 (5th Cir. 1974).

[97] Attorney General Griffin Bell has stated publicly that under the authority granted by S. 1393 no litigation will be undertaken "until all efforts at voluntary compliance have failed." Address by the Hon. Griffin B. Bell, before the National Association of Attorneys General, Indianapolis, Ind., June 1977. The Department has estimated, in fact, that no more than 7 to 10 suits per year will be initiated under the authority granted by S. 1393.

C. SECTION 3: AUTHORITY TO INTERVENE IN PENDING LITIGATION

Section 3 grants the Attorney General authority to intervene in pending suits which he would have been authorized to initiate under section 1. This section merely codifies the authority which the Attorney General has been exercising since 1971.[98] In cases of intervention as well as initiation, the Attorney General must notify the chief executive and legal officers of the appropriate State or political subdivision of his intention to participate in the litigation. However, with respect to intervention the purpose of avoiding litigation can not be served by a mandatory 30 day notice period and the rights of individual litigants are already before the court, so the Attorney General is required only to give notice a reasonable time before moving to intervene.

Even though section 3 applies only to pending suits where there is no possibility of pre-suit negotiations, the committee anticipates that the Attorney General will enter into good-faith negotiations with State and local officials who express willingness to reach a settlement in order to avoid protracted litigation. Once involved, the Attorney General is authorized to seek such relief as he would have been entitled to request had he initiated the action.

D. SECTION 4: ANNUAL REPORT TO CONGRESS

The requirement of section 4 that the Attorney General annually report to Congress on the number, variety, and outcome of actions in which he has participated under the bill is designed to ensure that Congress shall have the opportunity to assess periodically the efficacy and impact of the Justice Department's litigation program. Even in the absence of statutory authority granted by this bill, the Attorney General traditionally has included in his report to Congress information describing the activities of the Department in institutional litigation.[99] Similar requirements are imposed by other statutes.

E. SECTION 5: INSTITUTIONS DEFINED

The definitions of institutions in section 5 are intended to encompass any facility where persons residing therein are dependent for their basic living needs on the services provided by such facility. Specifically noted are facilities housing the mentally ill, retarded, disabled, chronically ill or handicapped, as well as prisons, training schools, jails, and other pretrial detention facilities.

As noted above, section 1 requires that the Attorney General find that a State or political subdivision, or an agent thereof, is engaged in a pattern or practice of illegal activity. In most cases, the institutions in question will be under the direct control of State or local governments. However, where the State contracts with private facilities or otherwise arranges for such facilities to fulfill functions traditionally performed by the State, there is no reason to exclude residents of such institutions from the protections of the Constitution and the coverage of this bill.[100] An amendment

[98] As noted above, there is growing doubt as to the Attorney General's authority even to intervene in pending litigation, absent express authorization from Congress. See motions to dismiss the United States as plaintiff-intervenor in *Horacek and United States* v. *Exon*, C.A. No. 72–L299 (D. Neb. 1976); *Alexander and United States* v. *Hall*, C.A. No. 72–209 (D.S.C. 1976); *Rone and United States* v. *Fireman*, C.A. No. 75–35A (N.D. Ohio). See also note 54 *supra*.

[99] See Annual Report of the Attorney General for 1974, at 73–74; Annual Report for 1975, at 85–86.

[100] See note 91 *supra*.

accepted during Judiciary Committee consideration makes it clear, however, that the bill is not intended to extend to strictly private facilities where there is no "State action," as that term has been defined in actions under the 14th amendment. The committee clearly intends that the resources and expertise of the Justice Department be directed against those operations which engage in the most severe and widespread practices of proscribed activity and where the relief sought will benefit large numbers of institutionalized individuals.

XII. Cost Estimate

In accordance with section 252(a) of the Legislative Reorganization Act of 1970 (Public Law 91–510), the committee estimates that there will be no appreciable increase in the existing administrative costs of the Justice Department in order to administer this act.

XIII. Tabulation of Votes Cast in Committee

Pursuant to section 133(b) of the Legislative Reorganization Act of 1946, as amended by Public Law 91–510, the following is a tabulation of votes in committee:

Motion to amend the bill by deleting all provisions allowing actions to enforce or secure rights of persons in any jail, prison, or other correctional facility was defeated by a vote of 3 to 13 as follows:

Yeas	*Nays*
Thurmond	Eastland
Scott	Kennedy
Laxalt	Bayh
	Abourezk
	Biden
	Culver
	Metzenbaum
	DeConcini
	Hatfield
	Allen
	Mathias
	Hatch
	Wallop

Motion to report Senate bill 1393, with amendments accepted by the committee without objection, was approved by a vote of 11 to 6 as follows:

Yeas	*Nays*
Kennedy	Eastland
Bayh	Hatfield
Byrd	Allen
Abourezk	Thurmond
Biden	Scott
Culver	Laxalt
Metzenbaum	
DeConcini	
Mathias	
Hatch	
Wallop	

XIV. Appendices

Appendix A

U.S. Department of Justice,
Washington, D.C., July 28, 1977.

Hon. Birch Bayh,
Chairman, Subcommittee on the Constitution, Committee on the Judiciary, U.S. Senate, Washington, D.C.

Dear Chairman Bayh: During my testimony before the subcommittee on June 17, 1977, concerning S. 1393, I was asked what guidelines might be followed by the Attorney General in our litigation program concerning the constitutional rights of institutionalized persons in determining whether to institute a suit and, if so, what relief might be obtained.

1. Standards for filing suits

As I stated in my testimony, the participation by the United States in suits such as contemplated by S. 1393 has been largely at the invitation of courts to appear as *amicus curiae* or through intervention in pending litigation instituted by private individuals. However, the Department has initiated a small number of suits where no private action was pending, based upon the theory that the Attorney General has inherent authority to bring suit to protect the interests of the United States, a theory which has long been accepted by the courts in other contexts. We have determined that the interests of the United States required the initiation of a suit where the following factors are present:

1. A significant number of individuals are being subjected to deprivations of rights secured to them by the Federal constitution or Federal statutes;

2. Such deprivations are pursuant to broadly applicable policies, procedures of practices;

3. Such deprivations are of an extremely serious nature, so as to include, but not be limited to, at least one of the following:

(*a*) Individuals are confined under conditions which amount to "cruel and unusual punishment," within the meaning of the 8th amendment,

(*b*) Individuals are subjected to confinement or to other severe restrictions of liberty without lawful justification, *e.g.*, failure to provide treatment to persons committed for the purpose of being treated,

(*c*) Individuals are denied basic freedoms, *e.g.*, freedom of speech, freedom of religion, freedom to petition the government (including reasonable access to the courts); and

4. There is no realistic prospect of an effective, timely remedy without the involvement of the United States.

We would expect to follow similar guidelines if a bill such as S. 1393 becomes law. I do not believe that it is necessary to incorporate such guidelines in the legislation itself. As I stated in my testimony, the Attorney General has had "pattern or practice" authority for some time in other areas of civil rights enforcement, and the Department of Justice has therefore had extensive experience in operating under that standard. I believe that the guidelines which

ave outlined would meet the "pattern or practice" standard. The committee could, however, include in its report on the bill language icating its understanding of this term.

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During my testimony, concern was expressed about the scope of language of section 1 of S. 1393 which authorizes the Attorney neral to institute a civil action for such relief as he deems neces- y to insure the full enjoyment of any rights, privileges, or im- nities secured by the Constitution or laws of the United States by sons confined in an institution. This language is quite similar to t of many other civil rights statutes which authorize civil actions the Attorney General, *e.g.*, 42 U.S.C. 2000a–5 (discrimination in blic accommodations); 42 U.S.C. 2000b (discrimination in public ilities); 42 U.S.C. 2000c–6 (desegregation of public education); U.S.C. 2000e–6 (discrimination in employment); and 42 U.S.C. 3 (fair housing). This language would, therefore, have established aning and its use would serve to insure that, in an appropriate case, Attorney General would not be limited in his authority to seek l relief for any violation which is within the terms of the statute. It is, of course, the court in which suit is brought which would deter- ne the extent of relief which would be granted to remedy a viola- n of constitutional or statutory rights. Thus, although the lan- age of S. 1393 gives authority to the Attorney General to seek such lief as he deems necessary, the courts, under general equitable inciples, would be required to fit the remedy to the violation which proved. For example, in recent decisions involving conditions in isons, courts have ordered relief which corrected unconstitutional ck of medical care, required internal due process for imposition of sciplinary measures and placed population ceilings on institutions hich were so overcrowded as to amount to cruel and unusual punish- ent. Where conditions exist which violate the constitution, an in- nctive order must be entered which would cause the conditions to brought within constitutional limits.

The constitutional standards as interpreted by the courts are, of urse, the measure of violations of constitutional rights. Frequently, owever, the trial courts have been guided in determining what con- itutes unconstitutional conditions by evidence of acceptable norms or institutions published in the form of "standards." The expert itnesses who have testified in our litigation concerning correctional acilities have referred primarily to the following published stand- rds as measures of the minimum conditions which should exist in hose institutions: the American Public Health Association's Stand- rds for Health Services in Correctional Institutions (1976), the American Medical Association's Standards for the Accreditation of Medical Care and Health Services in Prisons and Jails (1977), and he American Correctional Association's Manual of Correctional Standards (1973).

In the area of non-correctional institutions, the Department of Health, Education, and Welfare, which grants substantial financial ssistance to such institutions, has prescribed, pursuant to the author- ty conferred in 42 U.S.C. 1302, "Standards for Intermediate Care Facilities," 45 C.F.R. 249.13 Those "standards" are a useful and

frequently applicable measure of minimal requirements for facilities in which mentally retarded, mentally ill, and aged persons are confined.

Thank you for the opportunity of appearing before your subcommittee. If I can be of further assistance, please feel free to contact me.

Sincerely,

DREW S. DAYS III,
Assistant Attorney General,
Civil Rights Division.

APPENDIX B

THE LIBRARY OF CONGRESS,
CONGRESSIONAL RESEARCH SERVICE,
Washington, D.C., June 29, 1977.

To: Senate Subcommittee on Constitutional Rights (Attention: Nora Manella).
From: American Law Division.
Subject: Authority of the Attorney General to intervene in or initiate action to redress deprivations of constitutional and Federal statutory rights.

Pursuant to your request for a list of statutes giving the Attorney General the authority to initiate actions to redress deprivations of constitutional and Federal statutory rights, we have prepared the attached list.

As we discussed, your concern arises from language in S. 1393 which gives the Attorney General authority to redress constitutional or statutory deprivations "pursuant to a pattern or practice of resistance to the full enjoyment of such rights, privileges, or immunities * * *". Similar legislation has been introduced in the House. (H.R. 2439, H.R. 5791.) Hearings have been held concerning H.R. 2439 and we have enclosed for your reference the statement of Mr. Drew S. Days III, Assistant Attorney General, Civil Rights Division, Department of Justice.

Currently, the Attorney General is entrusted with similar "pattern or practice" authority under title VI of the Civil Rights Act of 1960 (voting), titles II and VII of the Civil Rights Act of 1964 (public accommodations and employment, title VII of the Civil Rights Act of 1968 (housing), sec. 518(c)(3) of the Crime Control Act of 1973, and sec. 122(c) of the State and Local Fiscal Assistance Act of 1972 (discrimination in programs receiving Federal assistance).

Some of these statutes give the Attorney General authority to both initiate suit and intervene in a private action. Some also require a "pattern or practice" of violations, meaning a repeated routine denial of rights, rather than an isolated instance. *U.S.* v. *Ironworkers Local 86*, 443 F. 2d 544 (9th Cir.), *cert. denied*, 404 U.S. 984 (1971) (employment). Others, however, require only that there exist reasonable grounds for belief that a person's federally protected rights have been or are about to be violated in order for the Attorney General to take legal action.

It is well settled that Congress does have the power under section 5 of the 14th amendment, to entrust enforcement of constitutional and Federal statutory rights to the Attorney General. The authority of the

Attorney General under the Civil Rights Act of 1960 was explicitly upheld in *United States* v. *Mississippi*, 380 U.S. 128 (1965). The Court's holding was premised on the congressional power under section 5 of the 15th amendment to protect the federally guaranteed right to vote:

> Section 1971 [42 U.S.C. 1971] was passed by Congress under the authority of the Fifteenth Amendment to enforce the Amendment's guarantee, which protects against any discrimination by a State, its laws, its customs, or its officials in any way. We reject the argument that the Attorney General was without power to institute these proceedings in order to protect the federally guaranteed right to vote without discrimination on account of color.

The same reasoning certainly applies to protection of the guarantees of the 14th amendment. We are unaware of any constitutional challenges to the grant of authority to the Attorney General to enforce and protect those Federal rights.

We hope the enclosed list will be useful to you. Should you need additional information, please feel free to call on us.

DONNA C. PARRATT,
Legislative Attorney

APPENDIX C

CONGRESSIONAL BUDGET OFFICE,
U.S. CONGRESS,
Washington, D.C., July 20, 1978.

Hon. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary, U.S. Senate, Dirksen Senate Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed S. 1393, a bill to authorize actions by the Attorney General to redress deprivations of constitutional and Federal statutory rights of institutionalized persons, as ordered reported by the Senate Committee on the Judiciary, July 18, 1978.

This bill would codify the authority of the Attorney General to initiate and to intervene in suits concerning the rights of institutionalized persons. Because the Justice Department currently performs such activities, no additional cost to the government would be incurred as a result of enactment of this bill.

Sincerely,

ALICE M. RIVLIN, *Director.*

XV. MINORITY VIEWS OF SENATORS THURMOND, SCOTT, AND LAXALT

We strongly oppose this bill. Many arguments and reasons have been given in opposition to S. 1393 but every one can be joined in four categories: (1) the basic premise is wrong; (2) it will promote conflict and not cooperation between State and Federal officials; (3) the further erosion of federalism; and (4) the increased burden on State institutions.

The hearings conducted on S. 1393 centered on the conditions in State institutions (principally mental institutions and prisons) which are in some cases reprehensible.[1] Consequently, the majority rushes in with the proposed solution to put these institutions under the watchful eye of the Justice Department and an already overcrowded Federal judiciary. Right away the assumption is made that the States either intentionally choose not to correct these conditions or ignore them. We believe this assumption is false and unwarranted.

State officials are doing what can be done with the limited resources available. In fact, as was discussed by several members of the committee, the Federal prison system with a great deal more money with which to work, in many cases, provides less than desirable conditions for its inmates. Senator Biden pointed out that attempts to force corrections through the use of the Justice Department were met with replies that there was not sufficient staff. Yet, when State institutions are involved, the Department is ready and willing.

In the recent past it has been the policy to allow the States to take a more active role with the Federal Government in the spirit of cooperation to solve common problems. This legislation does the opposite by fostering conflict between the State involved and a component of the executive branch of the Federal Government. Once a suit is brought, and probably before, the State Attorney General will be opposing the U.S. Attorney General. This can only lead to bitterness in State-Federal relations and be counterproductive to the goal of proper conditions for institutionalized persons.

The Attorney General of California in his testimony concerning this bill stated:

> Legislation such as S. 1393 may serve to short circuit the implementation of recent Federal legislation which reflects the assumption that the needs of institutionalized persons can be more fully satisfied by *comprehensive* and *cooperative* national and State legislative programs. The implementation of such programs is a more promising avenue for improving the quality of life of all institutionalized persons as such programs are not imbued with the deficiencies inherent in litigation. Such programs provide for Federal supervision through administrative regulations and procedures and thus obviate the need for granting the Attorney General a specific authorization to initiate civil actions.[2] [Emphasis added.]

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[1] A view of the photographs on pages 354–361 and 762–768 of the printed hearings illustrate many unfortunate conditions.

[2] Written statement of Hon. Evelle J. Younger, Attorney General for the State of California to the Senate Subcommittee on the Constitution, June 27, 1977. P. 984 of the hearing record

It would seem more logical that the appropriate Federal agencies would attempt to assist the States to correct any deficiencies that exist. The initiation of legal suit will conceivably require the diversion of State funds to defend an action from other areas where it is badly needed. After thousands of dollars are spent by both sides and the State loses, or if it decides to comply with the Attorney General's guidelines for changes in its institutions, where is the money to come from to make the changes? S. 1393 provides no financial assistance to the State or other means to comply with Federal requirements. One can only imagine the cost and burden on States with very limited finances to build an entirely new State prison or mental institution. This could put the State in the difficult position of having to remove finances from one area monitored by the Federal Government, to acquire the funds to apply to an institution, thus resulting in another complaint from the Federal Government.

The shift from cooperation to conflict leads to the most glaring and primary objection to this legislation which is the further erosion of our Federal system of government. We do not need to repeat arguments made many times in the past that our governmental system operates on a concept of division of powers between the National Government and the States. The right to control its institutions, especially prisons, is a power logically held by each State. When constitutional violations are asserted, the aggrieved party in the past has presented his case to the courts. This bill would permit the Justice Department to seek its own cases and initiate suit without a complaining party. In effect, the entire State prison system as well as mental institutions, county and city jails would be policed by the Justice Department.

The administration remedies already established by a State to remedy problem situations could be completely overlooked and the matter put immediately on a Federal docket. The Federal intrusion would affect the State legislatures where spending priorities would have to be set to meet the standards set by the Justice Department.

If we wish to retain federalism as a viable system of government then the intrusion into State affairs proposed by S. 1393 must be opposed.

The potential effects of this legislation are far reaching and subject to introduction in areas not now considered within its jurisdiction. The amount of paperwork and administrative problems that would fall upon these State institutions would be horrendous. Operating a State institution is difficult enough without further involvement with the Federal bureaucracy. The administrator for the Montana Mental Health and Residential Services wrote:

> Specifically, State mental health authorities, institutional administrators, and direct clinical staff are already under an almost excessive amount of litigation purporting to protect the individual civil and constitutional rights of the intsitutionalized persons. To add yet another layer would seem to me to be superfluous, expensive, and counterproductive.[3]

[3] Letter to Senator Paul Hatfield by Laurance B. Carlson, administrator, Mental Health and Residential Services Division, State of Montana, Department of Institutions.

The bill does not limit the term "institution" to a facility totally operated by a State. Although it is aimed at what is generally considered State institutions, it is arguable that the bill also encompasses private institutions which are operating under a State license. This, of course, would be subject to judicial interpretation but the strong possibility of broadening covered "institutions" does exist. Although the present Attorney General may indicate an intention not to pursue cases involving private institutions, this will not bind an Attorney General in future years.

The Federal courts can order a solution to any serious problems under existing law where there are interested relatives or guardians to lend their standing to a lawsuit. The groups of cases cited by the majority in this report amply demonstrates that the Department of Justice will be drawn into serious cases under existing law. Surely, as stated in the bill, where there is a "pattern or practice" of "extraordinary of flagrant conditions" affecting an institution, there will be one interested relative or guardian, or one "jail-house lawyer" among prison inmates, who will initiate a lawsuit as a member of what has become the most litigious society in all history. The Justice Department is in a position to lend its assistance to those individuals. Instead, the Justice Department, allied with other federal agencies, is asking the Congress to delegate it more power over State agencies and legislatures and to put it in more of an adversary role against the State attorneys general.

The American Bar Association is hard at work developing standards relating to the legal status of prisoners, a fact that illustrates that this is a currently developing area of the law (see Herbert S. Miller, "Taking the Rule of Law to Prisons", ABA Journal, July 1978, p. 990). Should an irresistible impulse to legislate in this area prevail, however, a minimal improvement to the bill would be an amendment to eliminate jails, prisons, and correctional facilities from its coverage, as was done by the House of Representatives on May 3 of this year before the companion measure was withdrawn from consideration. Subsequently, on July 28, when the bill was reconsidered the House agreed to a codification of current law with respect to correctional facilities that upon the request of a Federal judge, the Attorney General may intervene in cases involving the civil rights of prisoners.

In summary, this bill purports to take away from a State and its experts in their respective fields hired by the State the right to operate its own institutions and hand the control over to the U.S. Justice Department. It presupposes a lack of competence or insensitivity on the part of the State as the cause of any problems that exist. Confrontation instead of cooperation is chosen as a means to correct conditions deemed improper. In addition, changes ordered to be made must be arranged by the State regardless of the size of its treasury.

The increased burden on State officials and the money and time required to defend suits and comply with Federal edicts could have the opposite effect intended and result in a detrimental effect on the operation of State institutions and persons therein.

STROM THURMOND.
WILLIAM L. SCOTT.
PAUL LAXALT.

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Calendar No. 980

TH CONGRESS } SENATE { REPORT
d Session } { No 95-1057

IENDING THE SECURITIES EXCHANGE ACT OF 1934

JULY 31 (legislative day, MAY 17), 1978.—Ordered to be printed

. WILLIAMS, from the Committee on Banking, Housing, and Urban Affairs, submitted the following

REPORT

[To accompany H.R. 11567]

The Committee on Banking, Housing, and Urban Affairs, to which s referred the bill (H.R. 11567) to amend the Securities Exchange t of 1934 to authorize amounts to be appropriated for the Securities l Exchange Commission for fiscal years 1979 and 1980, having nsidered the same, reports favorably thereon, with an amendment, l recommends that the bill, as amended, do pass.

COMMITTEE DELIBERATIONS

H.R. 15567 was passed by the House of Representatives on April 4, 78 and referred on April 5, 1978 to the Committee on Banking, ousing, and Urban Affairs.

Senators Williams, Proxmire, and Tower introduced a similar bill 2715) by request on March 10, 1978. The Subcommittee on curities held hearings on May 18, 1978 and received testimony m the Securities and Exchange Commission. On July 31, 1978 the nmittee ordered H.R. 11567, with an amendment, to be reported the Senate.

BACKGROUND AND NEED FOR THE LEGISLATION

Section 1 of the bill would amend section 35 of the Securities Exange Act of 1934 (the Exchange Act) to provide the Commission th authorizations of $69 million in fiscal year 1979 and $79 million fiscal year 1980.

Prior to 1975, appropriations for the Securities and Exchange ommission were based on open-ended budget authorizations conned in the Exchange Act. The specific sum was determined by the

size of the Commission's annual appropriation. However, the Securitie
Acts Amendments of 1975 amended the Exchange Act to authorize
specific level of appropriations for the SEC in fiscal years 1976 and 197
and required additional authorizations in subsequent years.

For fiscal year 1978, the Commission submitted legislation to th
Congress providing for a multiyear budget authorization of $64 millio
in fiscal year 1978, $70 million in fiscal year 1979, and $75 millio
in fiscal year 1980. Because of its concern over the quality and quanti
of information provided by the SEC in justification of its requeste
authorization levels, the committee approved only a single year a
thorization. The following passage from the committee report captur
the committee's dissatisfaction with and recommendations for th
Commission's future budget presentations (S. Rept. 95–182):

> Based upon this experience, the committee encourages and expects the Commission to upgrade the quality and informational content of its budget submissions in the future. If the committee is to exercise its substantive oversight functions and set authorization limits for this important agency of Government, it must receive better and more detailed information from the Commission. In the same vein, the Commission should prepare its budget submission and estimate its financial requirements in coordination with its planned priorities and projected needs. Such planning will result in maximum advantage to the Commission in terms of both charting its future course and using its resources most efficiently and effectively.

The committee is generally pleased that the Commission has
sponded for this and future fiscal years by vastly improving t
informational and analytical content of the documents it submitted
the Congress concerning its budget requirements and future pla
According to the testimony of SEC Chairman Williams, the S
engaged in comprehensive and detailed budget planning. The Co
mission produced for the appropriate committees of the Congress t
informative and useful documents—a budget authorization requ
and a budget estimate. For the first time, the Commission prepa
information which both provides and permits detailed analysis
every aspect of the Commission's activities and resource requiremer
By setting out its program goals and long range objectives, the Co
mission has greatly assisted the committee. At the same time,
committee believes the Commission has benefited significantly fr
the exercise in terms of being better able to chart its own fut
course and apply its resources to maximum advantage and efficie

The SEC has once again requested a multiyear authorization.
unlike previous requests to which the committee was not recept
this year the SEC has made a strong and well-documented case
addition, the SEC pointed out that its single year authorization ma
it somewhat unique among the independent regulatory agencies. Th
are 10: six are presently funded on the basis of standing buc
authorization—the Civil Aeronautics Board, Federal Commun
tions Commission, Federal Maritime Commission, Federal Po
Commission, Federal Trade Commission, and Interstate Comm
Commission. Of the four remaining agencies with definite or f
budget authorizations, only the Securities and Exchange Commis

and the Nuclear Regulatory Commission are authorized appropriations on a single-year basis. The other two agencies, the Commodity Futures Trading Commission and the Consumer Product Safety Commission, have been granted budget authority for a 3-year period. The committee is aware of no reason to single out the SEC for annual authorizations which can be time-consuming for both the committee and the Commission.

THE NATURE AND PURPOSE OF THE LEGISLATION

On February 17, the SEC Chairman Williams proposed legislation for a multiyear authorization as follows: $70 million in fiscal 1979, $80 million in fiscal 1980, and $91 million in fiscal 1981. The legislation approved by the committee would provide a 2-year authorization for fiscal years 1979 and 1980 of $69 million and $79 million, respectively.

The following information, furnished by the Commission, details the nature and purpose of the Commission's requests:

[In thousands]

	Estimated requirements		
	1978	1980	1981
Salary and cost of related benefits	$53,321	$62,468	$71,612
All other expenses	10,773	11,670	13,021
Extraordinary expenses:			
A. Rental of space	3,796	4,096	4,396
B. ADP improvement	910	1,766	1,971
Unforeseen contingencies	1,200		
Total	70,000	80,000	91,000
Committee recommendation	69,000	79,000	

The committee has approved a 2-year authorization, rather than the 3-year authorization requested by the Commission. For fiscal 1979, the committee has authorized $69 million for the SEC. This reflects an increase of $7.9 million over the current appropriation of $61.1 million. The committee has decided against including full budget authorization for unforeseen and contingent expenses until such time and in the event the need actually arises and the precise financial requirements can be justified. At such time, the committee will consider the Commission's request for additional authorizations. For the 1980 fiscal year, the committee has authorized $79 million for the SEC. Again, this estimate was based upon salary rate increases, the impact of inflation, increased costs and higher staffing levels.

The committee believes the increased authorizations approved by the committee are justified for several reasons. The first and most important is the additional responsibilities of the SEC as a result of the Securities Acts Amendments of 1975 and the Foreign Corrupt Practices Act of 1977. The second reason is the overall trend toward more complex and time-consuming investigations and enforcement proceedings. Third, the growth of trading in put and call options has placed enormous strain on the Commission's personnel resources as well as posed delays in the completion of the SEC's current study of options trading. Fourth, there are emerging problems which may require vigorous SEC actions, such as the municipal securities markets and various Federal instruments, as have been experienced recently

with Government National Mortgage Association forward tra
tions. Fifth, the SEC must have the requisite funding to deal wit
new wave of corporate consolidations—tender-offers, mergers,
proxy contests.

This is not intended to list, in any order, the priorities of the C
mission. The Commission is well aware of the priorities establi
by the Congress. But the list does serve to illustrate the enorm
and expanding responsibilities of the SEC.

The committee believes the Commission should have funding c
mensurate with these responsibilities. The committee unanimo
recommends the enactment of this legislation in order that the
essary funds can be appropriated. At the same time, howeve
3-year authorization in the amounts requested by the Commis
would not be appropriate in view of the need to maintain close scru
over Federal spending as well as to provide for Congressional o
sight of the Commission's activities.

The Commission expects to collect in fees approximately $
million, or 55 percent of its budget in fiscal 1979. These fees imp
by the Commission include fees for registration of securities under
Securities Act of 1933, filings and reports made pursuant to the
tutes administered by the Commission, securities transaction
charged to national securities exchanges and broker-dealers pursu
to the Securities Exchange Act of 1934, and fees levied upon bro
dealers who are not members of any self-regulatory organizat
Since 1970, the percentages of the Commission's appropriations w
have been or are expected to be recouped by the fees charged
as follows:

	Percent		*Pe*
1970	71	1976	
1971	69	1977*	
1972	71	1978*	
1974	73	1979*	
1975	54		

*Estimated.

The Commission's expenses have been rising consistently over
past few years as a result both of inflation and of its increasing
sponsibilities. During the same period, the amounts of fees colle
have generally increased, but at a slower rate than the Commissi
expenses.

The fees charged by the Commission are set both by statute and
Commission rule, and it is difficult to determine whether the amou
of the various fees or the relationship between them is appropriate.
Commission should analyze the fee structure with a view tow
determining what percentage of the Commission's budget should
offset by the fees it collects; the relationship between the fees cha
by the Commission; and whether or not fees other than those
charged by the Commission should be established.

The committee has no desire that the Commission charge fees wh
create any undue burden on securities transactions or any adv
effect upon the capital markets. However, the Commission's
should be based on a clear and understandable policy. To the ex
that increased fees are collected by the Commission, fewer tax dol
will be needed to fund the Commission's operations. The commi

therefore expects the Commission to review the existing fee structure and to report to the committee the results of its review.

INADEQUATE OFFICE SPACE

The Commission has for several years been hampered by inadequate office space. Its headquarters staff is presently located in three different buildings in Washington. It is important for the Commission to obtain adequate office space sufficient for its entire staff, in a location accessible to the public and in close proximity to Congress and other regulatory agencies and departments with which the Commission interacts. The Commission's need for suitable office space should be addressed at the earliest possible time.

AMENDMENTS TO SECTION 3(b) OF THE SECURITIES ACT OF 1933

Section 2 of the bill would amend section 3(b) of the Securities Act of 1933 by increasing the maximum amount of securities which can be issued pursuant to the exemption provided by that section from $1.5 million to $2.5 million. Under section 3(b) of the act, the Commission is authorized to exempt certain classes of securities if the total offering price to the public does not exceed a specified amount. In 1933, the amount was $100,000 and three times in the past the Congress has acted to increase the amount of the small business exemption—in 1945 to $300,000, and in 1970 to $500,000 and, most recently to $1.5 million—in recognition of changes in the general economic conditions and increased costs of conducting business.

The increase to $2.5 million is identical to section 18 of H.R. 8331 as passed by the Senate in April of this year, as well as the provisions of S. 2305, a bill which is cosponsored by 24 Senators, including all of the members of the committee. As enacted and signed by the President, H.R. 8331 (Public Law 95–283) increased the maximum dollar amount under section 3(b) from $500,000 to $1.5 million. The committee continues to believe that the $2.5 amount is appropriate and has therefore determined to incorporate that amendment into the bill.

The Federal securities laws have always reflected the national policy of encouraging the growth and expansion of small business. From the time of the original enactment of the Securities Act of 1933, the Congress has provided special treatment for small business by the Securities and Exchange Commission.

The $500,000 limitation made it extremely difficult for issuers to interest investment bankers in exempt offerings under section 3(b), because the larger and more experienced investment banking houses are not interested in underwriting such small issues, partly because returns to them would not be commensurate with the effort needed to underwrite such an offering. Where an underwriter can be found, the underwriting commissions for these small issues run as high as 15 to 20 percent of the amount sold which, of course, reduces the funds available to the issuer of the securities and makes the offering less attractive to investors. In times of increasingly tight money, banks and private sources may not be willing or able to provide adequate risk capital and, therefore, small business needs to have access to public financing.

The committee and the Congress have indicated a continuing interest in promoting small business and new ventures and have provided several specific means of accomplishing this goal, such as Small Business Administration loans and the Small Business Investment Company enabling legislation. The exemption afforded under section 3(b) of the Securties Act of 1933 is looked upon as in important adjunct to existing legislation in this field. However, to be effective, it should be realistic and reflect current price levels. To assure that small businesses are able to attract capital at reasonable costs, it is necessary for the Congress, once again, to amend this provision of the securities laws.

The need to increase the section 3(b) ceiling to $2.5 million has been amply demonstrated. For example, the Senate Select Committee on Small Business, in a series of hearings held earlier this year concerning capital formation problems of small business, has compiled a detailed record of difficulties faced by small business in attempting to raise capital. A number of witnesses at those hearings emphasized the decline in the use of the SEC's principal small offering exemption, regulation A, and recommended an increase to $2.5 million in the statutory ceiling for such offerings.

The amendment approved by the committee is not designed to solve all of the capital-related needs of small business, many of which are unrelated to securities regulation. It does, however, represent an overdue step which, combined over time with many other steps, may contribute to alleviating some of the problems to which our Nation's small businesses are particularly susceptible.

It is significant that the Securities and Exchange Commission, which is charged with the responsibility for enforcing the Federal securities statutes, endorsed S. 2305. The fact that the SEC, which is primarily concerned with principles of investor protection, believes that the increased ceiling provided in section 3(b) is appropriate is persuasive evidence that the needs of investors and those of small businesses will both be accommodated through the amendment.

Although the statutory ceiling in section 3(b) was raised to $1.5 million in May of this year, and despite the committee's instructions to the SEC to act promptly in carrying out the intent of this amendment, the SEC has not yet acted to increase the maximum amount of the regulation A exemption under its rules. The committee once again urges and expects the Commission to act promptly in this matter. Finally, it is not the intent of the committee that the increase in regulation A should be accompanied by requirements which make use of the exemption more burdensome.

CHANGES IN EXISTING LAW

In the opinion of the committee, it is necessary to dispense with the requirements of subsection 4 of rule XXIX of the Standing Rules of the Senate in order to expedite the business of the Senate.

COST OF LEGISLATION

Pursuant to section 252(a) of the Legislative Reorganization Act of 1970, as amended, the committee accepts as its own estimate of the cost of carrying out the legislation the following costs estimates as prepared by the Congressional Budget Office.

CONGRESSIONAL BUDGET OFFICE,
U.S. CONGRESS,
Washington, D.C., July 31, 1978.

Hon. WILLIAM PROXMIRE,
Chairman, Committee on Banking, Housing, and Urban Affairs, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the attached cost estimate for H.R. 11567, a bill to amend the Securities Exchange Act of 1934 to authorize appropriations for the Securities and Exchange Commission for fiscal years 1979 and 1980, and for other purposes.

Should the committee so desire, we would be pleased to provide further details on the attached cost estimate.

Sincerely,

ALICE M. RIVLIN,
Director.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

JULY 31, 1978.

1. Bill number: H.R. 11567.

2. Bill title: A bill to amend the Securities Exchange Act of 1934 to authorize appropriations for the Securities and Exchange Commission for fiscal years 1979 and 1980, and for other purposes.

3. Bill status: As ordered reported by the Senate Committee on Baking, Housing, and Urban Affairs, July 31, 1978.

4. Bill purpose: the bill authorizes appropriations of $69 million for fiscal year 1979 and $79 million for fiscal year 1980 for the Securities and Exchange Commission (SEC). In addition, the bill raises the exemption ceiling on securities offered by small businesses from $1.5 million to $2.5 million.

5. Cost estimate:

[In millions of dollars]

Fiscal year 1979:	
Authorization level	69.0
Estimated cost	65.5
Fiscal year 1980:	
Authorization level	79.0
Estimated cost	78.5
Fiscal year 1981:	
Authorization level	
Estimated cost	4.0
Fiscal year 1982:	
Authorization level	
Estimated cost	
Fiscal year 1983:	
Authorization level	
Estimated cost	

The costs of this bill fall within budget subfunction 376.

6. Basis of estimate: The authorization levels are those stated in the bill. All funds authorized are assumed to be appropriated. Estimated costs are based on historical spendout rates for SEC salaries and expenses of 95 percent the first year and 5 percent the second year.

7. Estimate comparison: None.

8. Previous CBO estimate: On March 27, 1978, the Congres
Budget Office prepared a cost estimate on H.R. 11567 as or
reported by the House Committee on Interstate and Foreign
merce, March 22, 1978. The authorization levels in that bill we
million for fiscal year 1979, $80 million for fiscal year 1980, an
million for fiscal year 1981.

9. Estimate prepared by: Patrick J. McCann (225–7760).

10. Estimate approved by:

C. G. NUCKOLS
(For James L. Blum,
Assistant Director for Budget Analy

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Calendar No. 982

95TH CONGRESS
2d Session

SENATE

REPORT
No. 95-1058

AGRICULTURE, RURAL DEVELOPMENT AND RELATED AGENCIES APPROPRIATION BILL, 1979

AUGUST 1 (legislative day, MAY 17), 1978.—Ordered to be printed

Mr. EAGLETON, from the Committee on Appropriations, submitted the following

REPORT

[To accompany H.R. 13125]

The Committee on Appropriations, to which was referred the bill (H.R. 13125) making appropriations for Agriculture, Rural Development and Related Agencies programs for the fiscal year ending September 30, 1979, and for other purposes, reports the same to the Senate with various amendments and presents herewith information relative to the changes made:

AMOUNT IN NEW BUDGET (OBLIGATIONAL) AUTHORITY, FISCAL YEAR 1979

Amount of bill as passed by the House	$18,014,029,000
Amount of increase by Senate Committee	5,348,035,000
Amount of bill as reported to the Senate	23,362,064,000
Amount of 1978 Appropriations Acts to date	12,854,123,000
Amount of estimates, 1979	[1] 23,090,152,000
The bill as reported to the Senate:	
Over the appropriations provided in 1978	10,507,941,000
Over the estimates for 1979	271,912,000
Over the House bill	5,348,035,000

[1] Includes $5 billion for new borrowing authority of the Commodity Credit Corporation not considered by the House.

BREAKDOWN BY TITLE

The amounts of obligational authority for each of the five titles contained in the House bill for fiscal year 1979, compared with the

Senate Committee recommendations, are shown in the following table. A detailed tabulation, showing comparisons, appears at the end of this report. Recommendations for individual appropriation items, projects and activities are carried in this report under the apppropriate item headings.

	1978 enacted	1979 budget estimate	1979 House bill	1979 Committee recommendation
Title I. Agricultural programs	$2,100,434,000	$12,211,296,000	$6,863,150,000	$12,269,203,000
Title II. Rural development and assistance programs	1,845,340,000	1,856,244,000	2,025,183,000	2,048,662,000
Title III. Domestic food programs	7,643,695,000	7,842,758,000	7,949,835,000	7,859,310,000
Title IV. International programs	968,550,000	857,762,000	859,744,000	862,502,000
Title V. Related agencies	296,104,000	322,092,000	316,117,000	322,387,000
Total, new budget authority	12,854,123,000	23,090,152,000	18,014,029,000	23,362,064,000
Transfers from Sec. 32	1,014,557,000	1,411,575,000	1,336,575,000	1,411,575,000
Total obligational authority available	13,868,680,000	24,501,727,000	19,350,604,000	24,773,639,000

COMPLIANCE WITH SECTION 308 OF THE BUDGET CONTROL ACT

Section 308(a) of the Budget Control Act (Public Law 93-344) requires that this Committee include in its report specific budgetary information on the status of recommended appropriations relative to the First Concurrent Resolution. The following table provides these data:

BUDGETARY IMPACT OF H.R. 13125 [1]

[In millions of dollars]

	Budget authority		Outlays	
	Committee allocation	Amount in bill	Committee allocation	Amount in bill
Comparison of amounts in the bill with the Committee allocation to its subcommittees of amounts in the First Concurrent Resolution for 1979: Subcommittee on Agriculture and Related Agencies	24,900	23,362	14,600	[3] 13,732
Summary of functional category of 1979 budget amounts recommended in the bill:				
150–International Affairs	.....	806	.....	948
270–Energy	.....	26	.....	[2] 26
300–Natural Resources and Environment	.....	758	.....	[2] 706
350–Agriculture	.....	12,198	.....	[3] 1,473
370–Commerce and Housing Credit	.....	447	.....	[2] 45
450–Community and Regional Development	.....	666	.....	[2] 434
550–Health	.....	577	.....	[2] 569
600–Income Security	.....	7,883	.....	[3] 9,532
Financial assistance to State and local governments for 1979 in the bill	.....	3,203	.....	3,516
Projections of outlays associated with budget authority recommended in the bill:				
1979	.....	.....	.....	[3 4] 10,243
1980	.....	.....	.....	2,134
1981	.....	.....	.....	307
1982	.....	.....	.....	120
1983	.....	.....	.....	58
Future year	.....	.....	.....	.....

NOTE: Details may not add to totals because of rounding.

[1] Prepared by the Congressional Budget Office pursuant to section 308a, Public Law 93–344.

[2] Includes outlays from prior year budget authority.

[3] Excludes outlays from prior year budget authority.

[4] Excludes $1,412 million for outlays derived by transfer from section 32, and $63 million for limitations on administrative expenses. Budget authority in this bill includes $10,500 million for CCC; however, the outlays are excluded since they are under the jurisdiction of the Senate Committee on Agriculture, Nutrition and Forestry.

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SUMMARY OF THE BILL

General Comments

The Committee reports the Agriculture, Rural Development and Related Agencies Appropriation Act for 1979. The bill totals $23,362,064,000 in new budget authority. Making adjustments to the House bill for full funding of CCC reimbursements, $5 billion of permanent new borrowing authority, and full funding of new watershed projects, the bill is actually $120,780,000 below the House-passed bill, but $271,912,000 above the 1979 budget request.

The Committee took note of the many items and projects not in the budget request that could well provide a good return on investment. However, only those of highest priority have been recommended for funding in the bill. Naturally, such priority setting is difficult. However, the Committee has attempted to fashion a bill that takes into consideration the funding needs for agriculture and rural development. This has resulted in a bill in excess of the budget request, but in the opinion of the Committee, only by a prudent amount.

Highlights of Major Changes Recommended to House Bill

Highlights of major recommendations and changes to the House bill are:

Science and Education Administration (Agricultural Research Service).—The Committee does not concur in the House action shifting major new budgeted extramural—contractual—work to in-house labs, but does propose to shift $2 million in-house. In addition, a $7.7 million reduction is recommended in the $55 million account for processing, storage and distribution research, as proposed in the budget but restored by the House. House increases for staffing of the Baylor child nutrition laboratory and staffing and construction of the Regional Veterinary School at Virginia Polytechnic Institute have been deleted.

Research Construction.—The Committee recommends deferral of all new construction starts proposed in the House bill except the North Central Dairy-Forage laboratory, soil erosion laboratory and planning for relocation of an animal disease laboratory. Also, construction of a new greenhouse/headhouse is proposed.

Animal and Plant Health Inspection Service.—The Committee has added $5.7 million for range caterpillar, noxious weed, and brucellosis eradication above the House bill, but deleted House add-ons above the budget for imported fire ant, tuberculosis in livestock, pink bollworm, cattle scabies, and fever tick.

Cooperative research.—The Committee recommends an appropriation for Hatch Act grants at a $114 million level. The Committee recommends funding a competitive grants program of $30 million, the same as the budget request, but has also recommended deleting $15 million of House-added special grants and $5.5 million of House increases for rural development, range caterpillar and solar research projects.

Extension Service.—The Committee deleted House-proposed increases for rural development, farm safety, urban gardening, expanded food and nutrition program, and farmer-to-consumer direct marketing, as well as solar farms. An increase of $11.6 million above the budget and House bill is recommended for formula grants.

Agricultural Stabilization and Conservation Service.—Reduces funds for county office staffing by $10 million pending review of workload by the General Accounting Office.

Commodity Credit Corporation.—Fully funds reimbursements for prior year losses, which the House had cut by $410 million. Also, provides $10.5 billion in new borrowing authority, which the administration has indicated it suppports, even though the extra $5 billion has not been formally requested, nor included in the House bill.

Farmers Home Administration.—Generally concurs in House actions on Farmers Home programs, but does provide a $500 million above-moderate rural housing loan program and an additional 10,000 rural rent supplemental units above the House bill. Provides a total of $20 million ($13 million above the House) for 1,188 new FmHA positions.

Conservation.—Deletes House add-on of $7 million for new watershed planning because of large backlog, and fully funds $75 million in the President's budget for new Public Law 566 watersheds which the House had only partially funded. Provides $17 million for Resource Conservation and Development, instead of $32 million in House bill, and eliminates new area authorizations.

Agricultural conservation programs.—Provides $85 million for long-term enduring conservation practices, $105 million below the House level for the agricultural conservation program. Also, funds the new section 35 (section 208—Clean Water Act) agricultural conservation program at $100 million, with $75 million in an appropriation for non-point source pollution—grant agreements and technical assistance for the Soil Conservation Service, and the other $25 million in a separate appropriation for direct cost-sharing payments by the Agricultural Stabilization and Conservation Service. The Secretary of Agriculture is given authority to transfer up to 50 percent between each appropriation.

Feeding programs.—Deletes House add-on of $8 million for equipment assistance, and restores budget request to draw down section 32 to a balance of $225 million. Concurs in House bill and budget request for food stamps, food donations, special milk, and food program administration. Funds the special supplemental feeding program (WIC) at $550 million. Also, restores the Department's authority to regulate use of formulated grain fruit products in feeding programs.

Public Law 480.—Recommends deletion of the provision prohibiting Public Law 480 aid to Korea.

CCC export credit sales.—Proposes a limitation of $2.2 billion instead of the $1.7 billion level in the House bill.

Regulatory proceedings.—Deletes House provision prohibiting payment of expenses of parties intervening in agency regulatory proceedings.

Personnel ceilings and separate salaries accounts.—Deletes minimum ceilings stipulated in House bill and restores the budget approach of a combined salaries and expenses account.

Food and Drug Administration.—Restores $5 million reduced by House for salaries, since manyear requirements will more closely approximate budgeted levels.

Commodity Futures Trading Commission.—Deletes $900,000 of a budgeted increase for staffing that was approved by the House.

Items of Special Interest

OFFICE OF THE SECRETARY OF AGRICULTURE

The House made a reduction of $219,000 for the Assistant Secretaries, and $200,000 for the Office of Government and Public Affairs, citing the need for better coordination between these offices and the various agencies. The Committee cannot concur in these reductions, and has recommended their restoration. The Secretary of Agriculture has traditionally had a relatively small staff and a highly diversified set of agencies to administer. This makes it essential that he be provided sufficient staff support. A reduction in either area is considered unwarranted at this time.

However, the Committee does believe that, should there be a need to reduce congressional liaison activities, it can more easily be taken from the staffs of the individual agencies. The following table shows the number of man-years and funding associated with congressional agency liaison. The Committee is recommending a small decrease, 1 man-year in each of the larger agency budgets—ARS, ASCS, REA, FmHA, SCS, FSQS, and FNS.

CONGRESSIONAL RELATIONS

Agency	Man-years	Fiscal year 1979 salaries and benefits
Economics, Statistics and Cooperatives Service	1.75	$45,000
Agricultural Research Service	4.00	96,000
Cooperative State Research Service	.50	20,000
Extension Service	2.50	68,000
Animal and Plant Health Inspection Service	.50	12,000
Agricultural Marketing Service	2.00	74,000
Federal Grain Inspection Service	.50	17,000
Foreign Agricu'tural Service	2.00	55,000
Agircultural Stabilization and Conservation Service	3.00	60,000
Federal Crop Insurance Corporation	1.50	37,000
Rural Electrification Administration	3.00	72,000
Farmers Home Administration	4.00	65,000
Soil Conservation Service	5.00	142,000
Food Safety and Quality Service	5.00	135,000
Food and Nutrition Service	5.00	141,000
Office of General Sales Manager	.50	19,000
Total, Department of Agriculture	40.75	1,058,000

PERSONNEL CEILINGS

The bill, as passed by the House, contains a clear distinction between amounts provided for personnel compensation and benefits and for other expenses for several of the larger agencies of the Department of Agriculture. The expressed intent of the House in so providing was to curb the imposition of sometimes unrelistically low personnel ceilings on the Department by the Office of Management and Budget. The Administration has strongly objected to inclusion of these provisions in the bill, and the Committee has reluctantly concurred and recommends that such provisions be deleted.

As noted in the House report, OMB personnel ceilings have resulted in program inefficiencies, use of appropriated funds for purposes other than intended by Congress and the failure to implement congressional mandates. Congress in the past has addressed this problem by inclusion of a general provision in the bill which specifies minimum personnel ceilings for several agencies in the Department. This provision, however, is an imperfect device, at best, in meeting this complex problem and has had adverse impacts on other agencies of the Department.

The Committee finds pursuasive the arguments advanced by the Administration that provisions in the bill which specify personnel numbers or total salary levels are legislative encroachments on the Executive power of program management. At the same time, however, the Committee is cognizant that Congress bears a significant responsibility in assuring sound management of programs and efficient use of taxpayer dollars in conjunction with the executive branch.

As a means of balancing these conflicting concerns, the Committee recommends that those provisions in the bill which specify salary costs and personnel numbers be deleted as requested by the Administration. The Committee, however, has included the table

below which reflects its best judgement as to necessary and appropriate personnel compensation and benefit levels for several agencies in order to conduct the programs in accordance with the Committee's directives as specified in this report.

The Committee directs that the Department be given sufficient flexibility to carry out these programs as provided for in the bill, and further directs the Secretary of Agriculture to report to the Appropriations Committees of the House and Senate any deviations from the table on a quarterly basis.

The Congressional Budget and Impoundment Control Act of 1974 provides a reasonable and sound mechanism for the Administration to seek changes in the programs provided in this bill and will similarly be appropriate should changing conditions require significant deviations from those levels outline below.

Committee recommended salary and benefit levels

Agricultural Research Service	$208,764,000
Agricultural Stabilization and Conservation Service	63,011,000
Farmers Home Administration	170,937,000
Rural Electrification Administration	19,810,000
Soil Conservation Service	302,551,000
Foreign Agricultural Service	23,278,000

JUSTIFICATION MATERIAL

The Committee believes that the explanatory notes—justification material—of the various agencies funded in the bill contain a great deal of valuable information. However, the method of presentation is not as clear nor as comprehensive as required. This is particularly true in the case of the Science and Education Administration, the Animal and Plant Health Inspection Service, and the Food and Nutrition Service, although there are shortcomings in other agency justifications as well.

The Committee will expect appropriate revisions to be made in the format and nature of the 1980 justifications, based on close consultation with the Committee.

NO-YEAR FUNDING ACCOUNTS

The Committee has noted that for a number of years, many of the accounts in this bill have been appropriated on a "no-year" basis. That is, funds are available for obligation until expended. The Committee discussed this topic with the Department at its hearings and in most cases could find few compelling reasons for most of these accounts to remain no-year.

Under no-year funding, there is a difficulty for the Congress to discern real program levels because of the use of carryovers in many of the salary and expense and other accounts. In addition, this approach encourages the funding of items not specifically justified during the appropriations process through reprograming.

The Committee asked the General Accounting Office to examine this subject in further detail, and report to it on those accounts where there were compelling reasons to retain the no-year funding status. GAO provided this information and the Committee has made adjustments to the funding availability of the accounts.

The Committee notes that there are many activities that involve long-term contracts and multiyear funding. In those cases, no-year funding is retained. However, in the following other accounts, the Committee recommends 1-year funding, and has made the necessary adjustments in the bill: Emergency conservation measures, mutual and self help housing, rural housing for domestic farm labor, rural water and waste disposal grants, child nutrition programs, food program administration, food stamp program, special milk program, special supplemental food programs (WIC), conservation operations, river basin surveys and investigation, resource conservation and development, and watershed planning.

NUTRITIONAL STATUS MONITORING SYSTEM

Complementary language inthe Food and Agriculture Act of 1977 and the Senate Appropriations Committee report on fiscal year 1978 appropriations for the Departments of Labor and Health, Education and Welfare (HEW) required the joint development and submission to Congress by the Departments of Agriculture and HEW of a proposal for a Comprehensive Nutritional Status Monitoring System, to include three major components: an assessment system, a surveillance system and a strategy to evaluate the effectiveness of nutrition intervention programs. A discussion of the report and the HEW components of the system appears in the report on the fiscal year 1979 Labor-HEW appropriations bill.

The Committee is pleased that the Departments have responded to the challenge and made a significant first step in developing a coordinated system. While not all areas of overlap have been eliminated or all of the proposals sufficiently developed to justify funding at this time, the Committee believes that enough planning has been done for some major areas to move ahead with implementation of the overall structure at this time. The Department is expected to submit clarifications and justify remaining proposals at a hearing to be scheduled.

A coordinating structure for USDA nutrition research programs, including program evaluation, has not been developed, and the Committee considers this to be a top priority item to be submitted by the Department.

The Committee approves the basic structure of the assessment system, which will provide a better coordination between the National Food Consumption Survey (NFCS) and HEW's Health and Nutrition Examination Survey, and allow the NFCS to proceed on a 5-year cycle. An increase of $1 million ($600,000 above the President's budget) in USDA Federal Research (SEA) has been provided to allow improved analysis of the NFCS and special target population surveys. An additional amount of $1.5 million above the budget has been provided to improve methods of collecting dietary intake data. Unless that data is made more reliable, it will be difficult if not impossible to obtain more advanced analysis of the relationships among diet, nutritional status and health.

The Committee has also increased the FDA budget by $100,000 to improve the methodology of measuring total body stores of minerals and other constituents.

The Committee believes that an expansion of epidemiologic research in nutrition is a top priority, and has increased the FDA budget by $250,000 over the President's budget to allow a major expansion of research into the health risks of long-term ingestion of dietary supplements, drugs, and other substances. To avoid a potential overlap in the area of epidemiological research, the Committee directs that the Agriculture Department's research into the relationship between nutritional status and human health be limited to measuring the impact of nutrition intervention programs on participants. Investigations into the relationship of nutrition and health in the general population shall remain under the epidemiological responsibility of HEW. For this reason, no funding is provided for USDA proposals in the areas of dietary practices and knowledge.

No increase in Federal research is provided for impact of nutrition intervention programs, because the Committee has not received an acceptable strategy for evaluating nutrition programs. The Committee believes that getting a meaningful evaluation program underway is a top priority, and directs the Department to submit a detailed evaulation plan and budget request prior to the beginning of fiscal year 1979. The FDA has presented a compelling case for the need to evaluate its regulator and fortification programs, but has not yet presented the Committee with a workable strategy for performing such evaluation or a cost estimate.

The Committee is disturbed to learn of the gaps of knowledge and methods for determining the nutritional quality of foods, particularly fresh fruits and vegetables and processed foods. The Committee has therefore approved the President's request for $1.5 million for USDA analysis of nutrients in individual food items as well as a budgeted increase of $1.2 million to improve the nutrient data bank. An additional $1 million above the President's budget is provided to develop automated methods of nutrient analysis, so that this information can be obtained and updated on a timely basis that matches the actual rate of change in foods produced and consumed in the United States. FDA performs a related task of measuring the level of potentially toxic substances in the changing average diet, which requires analysis beyond that of individual food items performed by USDA. An increase of $250,000 over the budget estimate is therefore provided to expand the number of food items and double the number of geographic areas sampled in the FDA total diet studies from four to eight.

ENERGY

The Committee is particularly concerned about coordination between the Departments of Agriculture and Energy with respect to energy sources and techniques. Accordingly, the Committee directs that any energy-related research, development, or demonstration project addressing energy conservation technologies or the development of new sources or systems for agricultural or forestry applications carried out by the Department of Agriculture pursuant to this Act shall be administered in accordance with the April 15, 1977, memorandum of understanding between the Departments of Agriculture and Energy. This work shall be done in ways which: are

consistent with soundly formulated environmental, social, health, and safety considerations; adequately disseminate such technologies to industry in the agricultural and forestry sectors of the Nation and to rural America; and utilize the capabilities and facilities of each agency to the greatest possible extent.

RESEARCH FACILITIES STUDY

The Committee was confronted with an especially difficult problem during the consideration of this bill over proposed new research facility construction. The President's budget for the Science and Education Administration did not contain construction items except for minor alterations and repair. The Committee, however, received many requests for budget amendments to undertake new projects, some of which have received prior year funding for feasibility studies, planning, and design.

The Committee held a thorough special hearing on this issue and received testimony from both administration and nondepartmental witnesses. The thrust of the department's position was that budgetary and personnel constraints currently do not allow for full staffing of existing facilities and the construction of additional laboratories will only aggravate this situation. There appeared to be little question as to the merits of many of the individual proposals, however, some of which were previously examined by the Department and found to be of considerable potential, with high benefit/cost ratios.

The Committee carefully reviewed each proposed project, and mindful of the pressing constraints on the Federal budget, recommends that only four building and facility items be funded this year. These items are discussed later in the report.

It was very apparent during this difficult process that without a comprehensive facility plan for federally funded research facilities, only ad hoc decisions could be made on individual projects. The Committee notes that the Food and Agriculture Act of 1977 contains two provisions for research facility review: Sections 1462 and 1424 which specify a general agricultural facility examination and a human nutrition research facility review respectively.

These studies are to be completed this year and should in the future provide a valuable matrix in which individual projects can be analyzed and evaluated as part of a comprehensive program of research facility construction. The Committee is concerned that preliminary plans for the format of the studies do not provide for a sufficiently broad participation of research users, especially agricultural producers. The Committee expects that attention will be given to correct this deficiency.

Additionally, and of paramount concern, is the possibility that the studies may yield only a "shopping list" of possible projects. If the intent of the legislation is to be met, and the results of the studies to be of significant value, careful attention must be given to the development of a general facility development plan and structure, criteria, and policy for decisionmaking on new facility proposals. Accomplishment of this goal will also be very useful in analyzing proposed facility terminations and could serve as a model for

interdepartmental facility coordination. The Committee considers these objectives to be of highest priority and will expect the Department to report its progress in this respect as well as submit a final report prior to March 1, 1979.

USDA FIELD OFFICE PILOT

The Committee has attempted to promote greater efficiency in the USDA county office network for several years, but with little success. Currently the Department maintains nearly 17,000 full- or part-time field offices through 64 different organizational structures. Of these, 12,000 offices are county offices operated by 5 major agencies of the Department which serve primarily farmers and other rural residents. This array of offices have made efficient management an almost impossible task.

Last year, the fiscal year 1978 appropriations act authorized county offices personnel exchange on a nonreimburseable basis between USDA agencies. Additionally, language was included in the Senate report which directed the Secretary of Agriculture to make a finding that all personnel in the county were being utilized in an efficient manner and pursuant to effective personnel sharing plans prior to allocation of additional slots in that county.

With the passage of the 1977 farm bill, however, ASCS county workload increased dramatically and transferable, underutilized personnel were not available. Because of this, transfers of personnel pursuant to the new authorization have been either negligible or nonexistent. It currently appears that the Department has no plans to take action with respect to allocations of new personnel in county offices.

Earlier this year the Secretary established a task force to work on the problem; however it currently appears that the Department is accepting the multiagency organization structure in field delivery as a basic premise. The Committee seriously questions if significant increases in efficiency can be achieved within these limitations.

The Committee therefore directs the Department to proceed with a pilot USDA field office project which will, in a few counties around the Nation, replace existing multiagency offices with offices which are staffed by personnel who are not under the direction of a single agency. These personnel may be specialists in individual USDA programs but will be available to undertake other responsibilities as workload demands dictate.

The Committee directs the Department to report on its progress on a continuing basis, including the utility of broadening this program.

INADEQUACY OF THE FEDERAL BUDGET FOR AGRICULTURAL RESEARCH

An area of great concern to the Committee was agricultural research. Despite widespread recognition of the need for an expanded Federal commitment to agricultural research and the unquestioned premise that this activity is the underpinning of the leadership that our Nation commands in agricultural productivity, the President's budget for this area represents nearly a 4 percent

reduction in gross dollars, and a 10 percent reduction if inflation is considered. This can be contrasted to the 10-percent increase for defense research and development spending and a 7-percent increase in the budget for the National Aeronautics and Space Administration.

The Committee seriously questions the advisability of the direction of the President's budget in this regard. Concerns over the feeding of the world's hungry continue unabated, and as recent food price increases have shown in this country, a country gripped by inflation can ill-afford to ignore research on greater productivity that would tend to lower or maintain product cost.

For the Agricultural Research Service, the Committee has recommended an increase of $27.5 million above the budget estimate. This is composed of $14.5 million for high priority new facilities and $14.7 million for program increases. This amount is $17 million less than the House bill which recommended facility construction beyond what the Committee considered prudent at this time. The total recommended for the agency is $358.5 million, an increase of $25.9 million over the appropriation for fiscal year 1978.

In Cooperative research, the Committee was confronted by a budget estimate which proposed an increase in the new basic competitive grants program of $15 million to $30 million. This was accomplished largely at the expense of the traditional Hatch Act formula grant program. The Committee recognizes the value and need for the basic research initiative and, therefore, fully funded the President's request. The Committee also increased the formula Hatch Act funding by $5.5 million because this program remains the backbone of the Federal-State cooperative agricultural research program. The total budget for the Cooperative State Research Service, as recommended by the Committee, is $179.5 million, an increase of $21.4 million over the budget estimate and $36.4 over the fiscal year 1978 level.

Within the constraints of the overall bill totals, the Committee has attempted to increase the commitment to vital agricultural research. The administration has repeatedly communicated its concern that this bill not significantly exceed the budget estimate, and the Committee accordingly felt compelled to lower its goals in this area. The Committee, however, feels that funding for agricultural research is a basic and necessary responsibility of the Federal Government and is hopeful that future budget estimates will more realistically address this need.

TITLE I—AGRICULTURAL PROGRAMS

PRODUCTION, PROCESSING, AND MARKETING

DEPARTMENT OF AGRICULTURE

OFFICE OF THE SECRETARY

1978 appropriation	$2,641,000
1979 budget estimate	4,473,000
House allowance	3,791,000
Committee recommendation	4,310,000

The Office of the Secretary covers the overall planning, coordination, and administration of the Department's programs. Also included are certain services on a departmentwide basis, such as the administrative law judges who hold hearings on new regulations and orders and on disciplinary complaints filed by the Department or on petitions filed by private parties asking relief from some action of the Department.

For the Office of the Secretary for fiscal year 1979, the Committee recommends an appropriation of $4,310,000. This is $1,669,000 more than was appropriated for fiscal year 1978, $163,000 below the budget estimate and $519,000 above the amount provided in the House bill. The Committee recommends restoration of $219,000 deleted in the House bill for personnel previously detailed to the Office of the Secretary. These funds are needed to insure effective action on the part of the Secretary's office with respect to management of the Department. The Committee recommends concurrence with House action deleting $463,000 for the Office of Research, Extension and Teaching. The Committee recommends an increase of $300,000 for establishment of an Office of Energy.

DEPARTMENTAL ADMINISTRATION

1978 appropriation	$14,276,000
1979 budget estimate	17,696,000
House allowance	17,483,000
Committee recommendation	18,647,000

Departmental administration includes the budget and fiscal management functions, general operations (staff and support to agency programs), design of automatic data processing systems, personnel administration, equal opportunity programs, and information services including publications of the Department.

For Departmental Administration for fiscal year 1979, the Committee recommends an appropriation of $18,647,000. This is $4,371,000 more than was appropriated for fiscal year 1978, $951,000 above the budget estimate, and $1,164,000 above the amount provid-

ed in the House bill. The Committee recommends restoration of $200,000 deleted in the House bill for personnel of the Office of Governmental and Public Affairs. These funds are required as a result of direct funding of personnel previously detailed to the office and funded elsewhere. They are needed to enable the Secretary to coordinate the Department's legislative programs effectively.

In addition, the Committee recommends inclusion of $220,000, $450,000 and $294,000 above the House bill for a departmental level staff responsible for public participation in departmental activities, creation of an Office of Safety and Health Management, and expansion of the Office of Equal Opportunity of the Department, respectively. These are high priority program requirements not specifically formulated when the budget was submitted, but presented in hearings of the Committee.

The Committee recommends concurrence in a House reduction of $13,000 for transfer of nonreimbursable personnel.

Office of the Inspector General

1978 appropriation	[1] $20,204,000
1979 budget estimate	32,186,000
House allowance	[2] 22,945,000
Committee recommendation	31,564,000

[1] An additional $8,231,000 is available by transfer from food stamp program.
[2] Excludes $8,619,000 available by transfer from food stamp program.

The Office of the Inspector General includes both an Office of Audit and Office of Investigation. The Office of Audit performs all audit activities of the Department, and coordinates internal audit activities of the Department with other audit agencies of the executive and legislative branches of the Government. The Office of Investigation performs all investigative activities of the Department, provides personal security to the Secretary, and coordinates internal investigative activities of the Department with other investigative agencies of the executive and legislative branches of the Government.

For the Office of the Inspector General for fiscal year 1979, the Committee recommends an appropriation of $31,564,000. This is $11,360,000 more than was provided for fiscal year 1978, $622,000 below the budget estimate, and $8,619,000 above the amount provided in the House bill. The Committee does not concur in the transfer of $8,619,000 from the food stamp program, and recommends a direct appropriation, instead. The Committee recommends concurrence in reductions of $600,000 for contract audit functions and $22,000 for transfer of nonreimbursable personnel to the Office of the Secretary.

Office of the General Counsel

1978 appropriation	$9,450,000
1979 budget estimate	10,325,000
House allowance	10,251,000
Committee recommendation	10,251,000

The Office serves as legal counsel for the Secretary of Agriculture and performs all legal work for the Department. It represents the

Department in administrative and judicial proceedings, examines titles to lands to be acquired by the Department or accepted as security for loans, and disposes of claims arising out of the Department's activities.

For the Office of the General Counsel for fiscal year 1979, the Committee recommends an appropriation of $10,251,000. This is $801,000 more than was appropriated for fiscal year 1978, $74,000 below the budget estimate, and the same as the amount provided in the House bill. The Committee concurs in House reductions of $66,000 for increased legal services, and $8,000 for transfer of nonreimbursable personnel to the Office of the Secretary.

Federal Grain Inspection Service

1978 appropriation	$11,000,000
1979 budget estimate	22,708,000
House allowance	22,680,000
Committee recommendation	22,680,000

The Federal Grain Inspection Service carries out grain inspection, weighing and other programs under the authority of the U.S. Grain Standards and Agricultural Marketing Acts, as amended.

Through these market programs, the Service aids in advancing orderly and efficient marketing and effective distribution of grain and related products from the Nation's farms to domestic and foreign buyers.

The amended U.S. Grain Standards Act requires the Service to revise, improve and expand the national grain inspection and weighing system. Areas of major emphasis include: elimination of conflict of interest in designated inspection agencies; Federal performance or supervision of grain weighing; improvement in the inspection system through increased Federal involvement particularly at export locations; review of grain firms records and registration of those firms operating in export trade; and, a complete review and revision of U.S. grain standards to insure their application will result in the production and delivery of high quality grain needed to meet the end-use requirements of domestic and foreign buyers.

For the Federal Grain Inspection Service for fiscal year 1979, the Committee recommends an appropriation of $22,680,000. This is $11,680,000 above the amount appropriated for 1978, $28,000 below the budget estimate, and the same as provided in the House bill. The Committee concurs in a $28,000 decrease by the House for transfer of nonreimbursable personnel to the Office of the Secretary.

The Committee concurs in the House recommendation that the Service pay close attention to the inspection of farm-stored grain, within the authority under present law.

The Committee is concerned about the potential for over-staffing in the Federal Grain Inspection Service. A detailed analysis of workload and staffing requirements is to be submitted along with the 1980 budget. This should review staffing over at least a 3-year period 1977–1980.

AGRICULTURAL RESEARCH SERVICE

RESEARCH

1978 appropriation	$324,859,000
1979 budget estimate	323,088,000
House allowance	334,100,000
Committee recommendation	337,791,000

The Agricultural Research Service (ARS) is the Federal research portion of the Science and Education Administration established in 1977. The Service conducts research to provide the means for a safer, more economical, and more abundant supply of agricultural products for the Nation. The Service uses coordinated, interdisciplinary approaches to perform basic and applied research in the fields of livestock, plants, soil-water-and-air resources, marketing and use of agricultural health hazards.

Programs financed from this appropriation include research on animal and plant production, research on the use and improvement of soil, air, and water aimed at improving the management of natural resources, research on processing storage, distribution, nutrition and food safety and consumer services, an allowance for contingencies, and support services to other U.S. Department of Agriculture agencies.

For the Agricultural Research Service for fiscal year 1979, the Committee recommends an appropriation of $337,791,000. This is $12,932,000 more than was appropriated for fiscal year 1978, $14,703,000 more than the budget estimate and $3,691,000 more than the amount provided in the House bill.

Adjustments made to the House bill and budget request are discussed below:

Crop production efficiency.—The Committee concurs in the House action to provide a total of $3,106,000 for tobacco production research. With respect to small scale farm production, the House bill recommended a reduction of $3,500,000 for contractual—extramural—work, and an increase of $3 million for in-house efforts. The Committee has deleted $1.5 million of the proposed House increase for in-house efforts, but funded an extramural program of $1.5 million as well. The Department is to reallocate the programs based on the revised funding levels described herein.

With regard to research into integrated pest management, the House shifted $1.5 million of the budget request from extramural to in-house efforts. The Committee concurs in one-third of this shift, and has deleted $1 million of the additional amount provided by the House for in-house efforts, while restoring $1 million of the House reduction for contractual work in this area. The Committee expects the additional in-house funds to be applied with an emphasis on insects.

In the area of research on selected plant varieties and production, the Committee concurs in the House-proposed increase of $154,000 for research on Japanese beetle and $100,000 for research in soybean pollination. The Committee recommends deletion of $60,000 for an increase over the budget provided in the House bill for pickles, onions and carrots research, and deletion of a House-proposed increase of $150,000 for research on English walnuts.

The President's budget provided for the close out of the Hard Red Spring and Durum Quality Research Laboratory located on the campus of the North Dakota State University in Fargo, N. Dak. The mission of this facility has been to assist in the development and improvement of the Hard Red Spring and Durum wheats which are produced in the 4-State region in which it is situated. These wheats usually sell at a premium over other wheats because of their high protein content and are a significant portion of the wheat exports of the United States. This facility was relocated in North Dakota in 1961 for the specific purpose of assuring close interaction between its work and the cooperative efforts of the State agricultural experiment stations and of the wheat producers in the region, as is the case with the three other regional wheat quality stations of the Agricultural Research Service.

The Committee finds that the regional nature and the principal mission of the facility, to increase the quality of Hard Red Spring and Durum wheats, remains of very high priority and is necessary to keep American agricultural producers competitive in the world wheat markets. For these reasons the Committee recommends that the proposed redirection of base research funds be rejected and, in addition, concurs with the House increase of $100,000 above the budget for this facility. The Committee further directs the Department to act expeditiously in fully staffing this facility.

For pea and lentil research, the Committee recommends an increase of $50,000 over the House allowance, for a total increase of $150,000 above the budget.

With respect to research on chalkbrood disease in leafcutting bees, the House added $80,000 above the budget, and the Committee recommends a further increase of $120,000, providing for a total increase of $200,000 above the budget.

Rural housing research.—The House added $389,000 above the budget estimate for rural housing research and the Committee concurs in this increase.

Tropical and subtropical research.—The House bill provided for an increase of $343,000 above the budget for tropical and subtropical agricultural research. The Committee recommends a further increase of $4.5 million, for a total increase above the budget of $4,843,000. The Committee believes that a higher funding level is needed to implement a viable program in this important area of food production research.

Energy conservation in farm production.—The House bill proposed to increase in-house efforts in research on energy conservation and climatic stress by $3,000,000 over the budget and decrease extramural work budgeted in this area by $3,884,000. The Committee recommends approval of the budget request, and accordingly, has restored to the House bill $3,884,000 for extramural efforts, and deleted $3,000,000 for in-house efforts.

Processing, storage, and distribution efficiency research.—The House bill increased the budget request by $7,670,000 for processing, storage, and distribution efficiency research in order to maintain ongoing efforts in this area. The Committee does not concur with this action, and believes that the $45,685,000 included in the budget estimate is sufficient, assuming that the work financed here can be

undertaken by private industry as proposed in the budget. Accordingly, the Committee has deleted the House increase and restored the budget estimate.

Human nutrition research.—The Committee concurs in a House proposal to delete $5 million of new contractual efforts proposed in the budget. The Committee has added $3.1 million for additional specific efforts on nutrition as discussed elsewhere, in the following amounts: $600,000 for the national food consumption survey and target population surveys, $1.5 million for methodology and data collection research, and $1 million for automated nutrient analysis.

Contagious equine metritis.—The Committee concurs in the House increase of $500,000 above the budget for research on contagious equine metritis. The House proposed that these funds be matched on a 50-50 basis by State, local or industry contributions. The Committee concurs in the need for a match, but directs that the Department make suitable arrangements for a match over several years, and not on a year-by-year basis. In negotiating such an arrangement, consideration shall be given to including in-kind contributions.

Presidio study.—The House added $100,000 above the budget request for a study of the feasibility of USDA's assuming operation of the Letterman Army Institute of Research at the Presidio in San Francisco, for use as a human nutrition laboratory. At the present time, the Committee does not concur in such increase and has deleted the funds. The Committee believes that the feasibility study can be accomplished within available funding.

National Herb Garden.—The Committee does not concur with the increase of $200,000 above the budget for establishment of the National Herb Garden.

Staffing of North Central Dairy-Forage Laboratory and Clusters.—The Committee concurs in the proposed increase of $900,000 above the budget for additional staff to perform dairy-forage research both at the new North Central Dairy-Forage laboratory and at associated cluster locations. This includes $675,000 for the main facility at Madison, Wisc. plus other cluster locations in the North Central Region, as well as $225,000 for cluster locations in the Northeastern Region. The work to be performed at the cluster locations will be part of a fully coordinated and integrated program administered by the main facility in Madison.

Staffing of Kearneysville Laboratory.—The Committee concurs in a House proposed increase of $900,000 above the budget for staffing of the Appalachian Fruit Research Station, a new facility. In addition, the Committee recommends a further increase of $400,000, for a total increase of $1.3 million above the budget. The Committee directs that this funding be used to staff the facility at its phase I level of 11 scientists. The Committee expects that this facility will eventually be provided with its full complement of 24 scientists and associated staff.

Staffing and construction: Regional Veterinary School at Virginia Polytechnic Institute.—The House added $1,250,000 above the budget for staffing and construction of a Regional Veterinary School at Virginia Polytechnic Institute. The Committee has deleted these funds and deferred funding of this new school at this time.

Staffing: Child Nutrition Laboratory at Baylor Medical College.—The House added $1.5 million above the budget for staffing in order to begin USDA-funded research program in child nutrition at the Baylor College of Medicine. The Committee recommends deletion of these funds, and is deferring action on this child nutrition laboratory at this time.

Transfer of nonreimbursable details.—The Committee concurs in the House- recommended reduction of $206,000 for transfer of nonreimbursable personnel to the Office of the Secretary of Agriculture.

Shipping Fever and Range Management.—The Committee has added $200,000 above the budget request and House allowance for range management research at Woodward, Okla. In addition, the Committee has provided $250,000 above the budget and House bill for shipping fever and range management research at El Reno, Okla.

Beef forage/crop residue study.—Ruminant livestock such as cattle have the unique ability of harvesting and converting high cellulose plant materials into high quality human food. These forages, otherwise inedible by humans, compose about 90 percent of all plant material and represent a tremendous opportunity to improve the nutrition and diet of the human population in both the developing and developed nations of the world.

Progress is being made in the utilization of grass and other forage materials as animal feeds but little work has been done on the use of crop residues. In the United States, about 200 million tons of these high cellulose residues are produced and wasted each year. These include such materials as wheat straw, corn stalks, and milo stalks. The magnitude of this underutilized resource on a global scale is enormous.

For these reasons, the Committee has included $150,000 in the bill to survey the possibilities of using straw and other crop residues as an economical and efficient feed for livestock. The study shall be conducted in cooperation with a land-grant institution in a major agricultural State and shall include the following:

(a) A listing and assessment of the relative values of crop residues that might be utilized as livestock feed nationally and worldwide.

(b) The harvesting or collection, processing, storage, transportation and feeding problems that are associated with each residue or class of residues.

(c) The effects on soil and cropping practices caused by removing crop residue from the land.

(d) A listing of those problems that could be resolved through research in the areas of animal nutrition, processing, transportation, soil science and economics.

(e) A feasibility study of a cooperative State-Federal meat animal forage research center as a focal point in domestic and international ruminant nutrition issues. The Department is expected to report to the Committee prior to next year's hearing and to make appropriate recommendations for optimum use of crop wastes.

Tanning research.—An increase of $250,000 above the House allowance and budget request is recommended for additional research in tanning of hides.

Forage crops-range.—The Committee recommends that $300,000 be added to the House allowance for research into forage crops at Burns, Oreg. The House bill provided an increase of $85,000 over the budget in this area, therefore, the Commmittee recommendation is a total of $385,000 above the budget.

Grass seed research.—The Committee concurs with the House increase of $84,000 above the budget for grass seed research.

Field crops and their relation to wildlife.—The Committee has added $100,000 above the budget and House bill for studies of field crops and their relation to wildlife in Alaska.

Potato and tomato research, Prosser, Wash.—The House bill added $115,000 for potato and tomato research. The Committee concurs in that increase, as well as an additional $13,000 for the same purpose.

Sugarcane research.—The Committee recommends an increase of $450,000 above the House bill and budget request for sugarcane research in Houma, La.

Handbook No. 8.—The Committee believes that there is a distinct need to revise and update Agriculture Handbook No. 8 on Pork Standards. Accordingly, $300,000 is provided above the budget estimate and House allowance to begin work this year. It is anticipated that further funding of this effort will be required again next year in order to complete it.

Congressional liaison.—As discussed earlier, the Committee is recommending a reduction of $25,000 from the House bill and budget for congressional liaison activities.

Sugarcane varietal research.—In order to avoid a serious loss of the sugarcane crop in the Southeastern United States, the Committee recommends an additional $357,000 above the budget and House bill for development of new varieties of sugarcane that are resistant to sugarcane smut. This disease has just been discovered in the United States, and there is a need to find resistant varieties to insure a viable crop.

High Plains Grasslands Research Station.—The Committee recommends an increase of $500,000 above the budget and House bill for continued operation of the High Plains Grasslands Research Station.

Acala cotton.—Within the funds provided, the Committee will expect the Department to continue to operate the Shafter Research Station in California for 1 more year. The Committee has been advised that the cost of this station will be assumed by the State of California beginning in 1980.

Biological facility. The Committee has included a provision which allows the agency to purchase a tract of land in Valbonne, France, for the establishment of a Biological Control Laboratory. The funds needed for the acquisition of lands can be obtained from existing program funds. This facility will consolidate separate research facilities currently located in France and Italy in unfavorable geographic locations and when established, will increase efficiency.

Plant disease reporter.—Contained within the Committee's recommended appropriation are sufficient funds to continue publication of the Plant Disease Reporter. However, the Committee directs the Department to proceed expeditiously to arrange for transfer of

funding and editorial responsibility of this publication to a suitable scientific organization prior to the end of the fiscal year.

Stripper Cotton.—The Committee is concerned about the lack of adequate funds necessary for research into the production, harvesting and ginning of stripper cotton. Approximately 25 percent of the cotton grown in the United States is of the "stripper" variety, and the Committee feels additional funds should be allocated to the Oklahoma-Texas area where existing facilities are available to conduct this important research.

University of Arkansas.—Within the funding recommended for the Agricultural Research Service, the Committee has earmarked a total of $100,000 for carrying out work directed to entering into an agreement with the University of Arkansas for establishing a research program using the facilities located at Booneville and Mansfield, Ark. This program involves research into the typical problems of managing small farms, with emphasis on methods of conserving energy in farm production.

Alcohol fuels.—The Committee has provided $2 million for Federal research in the area of alcohol fuels. It is anticipated that these funds would enable USDA to fund research to identify crops with high Btu content and biomass productivity; develop efficient harvesting techniques; improve distillation and fermentation processes to make them less costly and more energy efficient; to make possible the use of lower quality and distressed crops and residues for use in alcohol production; and address the utilization of forest products.

The Committee anticipates that a major portion of this research can be done with laboratory space, equipment and a core of scientific expertise already available at the Northern Regional Research Center at Peoria, Ill. Further, the Committee expects a quarterly progress report from the Department on the use of these funds.

Research redirections.—With the exception of those items discussed previously in this section, the Committee concurs with the redirections in research activities proposed in the budget estimate.

Kenaf research.—The Committee recommends an increase of $222,000 for Kenaf processing research, the same amount included for this purpose in the House bill.

Fruit and nut germ plasm repository.—A total of $500,000 has been added to the bill for operation of the fruit and nut germ plasm repository discussed under the appropriation for buildings and facilities, Agricultural Research Service.

Buildings and Facilities

1978 appropriation	[1]
1979 budget estimate	$500,000
House allowance	35,720,000
Committee recommendation	15,000,000

[1] This is a new account, previously funded as part of the Agricultural Research Service.

The Committee concurs in the House recommendation that a separate appropriation account be established for the construction and planning of buildings and facilities by the Agricultural Research Service. Routine construction or replacement items will remain under limitations in the regular research account.

For Buildings and Facilities for 1979, the Committee recommends an appropriation of $15,000,000. This is $20,720,000 below the amount provided in the House bill, and $14,500,000 above the budget estimate for 1979.

Each construction item is discussed below:

Fruit and Nut Germ Plasm Repository.—The Committee has deleted $500,000 from the House bill that was also included in the budget request for the Fruit and Nut Germ Plasm Repository. However, language is included in the bill that will permit the construction of this facility.

Planning for relocation of Animal Disease Laboratory from Denver to Fort Collins.— The Committee concurs in the House increase of $700,000 above the budget to enable planning to proceed on moving the animal disease research center from the Denver Federal Center to Fort Collins, Colo.

Planning for Moisture and Plant Stress Laboratory.—The Committee recommends deletion of $800,000 added above the budget by the House, for planning of a Moisture Conservation and Plant Stress Center to be located in Lubbock, Tex.

Mint research greenhouse.—The House added $20,000 above the budget request for construction of a greenhouse at Corvallis, Oreg., to be used in conjunction with research on mint. The Committee does not concur in this increase and recommends it be deleted.

Human Nutrition Center, Tufts University.—A total of $21,100,000 was added above the budget by the House for construction of a Human Nutrition Laboratory at Tufts University in Massachusetts. The Committee has decided to defer funding of construction at this time, and has, therefore, deleted these funds from the bill.

North Central Dairy-Forage Laboratory.—The Committee concurs in the House proposed increase of $9 million above the budget for construction of a dairy-forage laboratory at the University of Wisconsin in Madison. Funds for initial staffing at the University and in cluster locations are included in the regular Agricultural Research Service account.

Soil Erosion Laboratory.—The Committee concurs in the House proposal to provide $3.6 million above the budget for construction of a research center at Purdue University that will examine the mechanics of soil erosion.

Greenhouse/Headhouse, Stillwater, Okla.—The Committee recommends that $1,700,000 be added above the budget and House bill, for construction of a greenhouse/headhouse complex at Stillwater, Okla. This facility will provide needed space for Federal reseachers currently located in overcrowded State buildings.

Scientific Activities Overseas (Special Foreign Currency Program)

1978 appropriation	$5,750,000
1979 budget estimate	7,500,000
House allowance	5,750,000
Committee recommendation	5,750,000

Foreign currencies which the Treasury Department determines to be excess to the normal requirements of the United States are used

for expenses of carrying out programs of the Department of Agriculture under the Agricultural Trade Development and Assistance Act of 1954, as amended. Research which is important to American agriculture and supplements our domestic programs is carried on through agreements negotiated with institutions and organizations in foreign countries. For example, research is conducted on exotic insect pests and diseases of plants and animals which cannot be done in the United States. Specialized projects provide for the translation and dissemination of foreign language scientific publications.

For Scientific Activities Overseas for fiscal year 1979, the Committee recommends an appropriation of $5,750,000. This is $1,750,000 below the budget estimate and the same as both the amount appropriated in 1978 and included in the House bill for 1979.

Animal and Plant Health Inspection Service

1978 appropriation	$441,204,000
1979 budget estimate	220,213,000
House allowance	230,817,000
Committee recommendation	228,150,000

The Animal and Plant Health Inspection Service conducts programs to protect the animal and plant resources of the Nation from destructive pests and diseases.

1. Plant disease and pest control.—In cooperation with the States, programs are conducted to eradicate or prevent spread to uninfested areas of certain plant pests which are established in this country. Surveys are conducted to detect harmful pests and diseases. An inspection program is conducted at ports of entry to prevent the entrance of insects, nematodes, and diseases which are harmful to the plant life of the United States. Plants and plant products are also certified for export.

The level of activities for plant disease and pest control is shown by the selected examples that follow:

	1977 actual	1978 estimate	1979 estimate
Acres treated (thousands):			
Boll weevil (high plains)	1,162	768	577
Boll weevil (eradication)	.....	240	190
Grasshopper	1,408	1,000	1,000
Gypsy moth	51	140	180
Imported fire ant	9,177	1,000	.....
Sterile insects released (millions):			
Mexican fruit fly	24	24	50
Pink bollworm (adult moths)	350	200	200
Mediterranean fruit fly	8.5	2,580	15,600
Boll weevil (eradication)	.....	.....	60
Parasites released (thousands):			
Citrus blackfly	351	10,611	12,045
Cereal leaf beetle	543	600	600
Total acres released from quarantine through eradication: Witchweed	4,470	5,000	3,000
Environmental monitoring and methods development: Imported fire ant:			
Sites monitored	500	700	700
Test plots conducted	215	200	200
Alternate chemicals screened	20	20	20

The level of activities for agricultural quarantine inspection at ports of entry is as follows:

	1977 actual	1978 estimate	1979 estimate
Plant and animal product and by-product inspection:			
Airplanes (thousands)	300	300	300
Vessels (thousands)	65	65	65
Vehicles from Mexico (millions)	43	44	44
Baggage, pieces (millions)	110	111	111
Mail packages of agriculture interest (thousands)	170	171	172
Plant units processed (millions)	155	160	165
Cargo inspections conducted (thousands)	315	320	325
Cargo treatments conducted (thousands)	19	20	21
Imported animal products/byproducts: pounds (millions)	610	620	625
Phytosanitary export certification:			
Certificates issued (thousands)	77	78	79
Interceptions (thousands):			
Unauthorized plant material	685	690	700
Unauthorized animal products/byproducts	262	265	270
Plant pests	129	130	131

2. Animal disease and pest control.—Programs are conducted to keep communicable diseases of foreign origin from entering this country and to prevent the spread of diseases through interstate shipments of livestock or distribution of impure or impotent veterinary biologics. In cooperation with States, other programs are directed at the control and eradication of livestock diseases present in this country. The animal welfare program is concerned with the humane care and handling of approximately 40 million warm-blooded animals.

COMMITTEE RECOMMENDATION

For the Animal and Plant Health Inspection Service for fiscal year 1979, the Committee recommends an appropriation of $228,150,000. This is $28,527,000 more than the comparable amount provided in 1978, $7,937,000 above the budget estimate, and $2,667,000 less than the amount provided in the House bill.

The following discussion highlights the changes to the House bill:

Imported fire ant.—The Committee recommends deletion of the House add-on of $942,000 above the budget for the fire ant program. The bill contains $1 million which is sufficient to continue methods development and survey work. No effective chemicals are currently available for a treatment program and the Committee has consequently removed the House reserve on funds requested for repayment to the Commodity Credit Corporation.

Range caterpillar.—The House added $506,000 above the budget for control of range caterpillar. The Committee concurs in this increase, and has added an additional $1 million in view of the continued spread of this pest into additional States.

Brucellosis eradication.—The Committee recommends an increase of $3 million over the budget request and House allowance to provide for an increased effort in the eradication of brucellosis, principally through accelerated calfhood and adult vaccination.

Hog cholera.—The Committee concurs in the House reduction of $500,000 from the budget for hog cholera.

Import-export inspection.—The Committee concurs in the House decrease of $2,412,000 for import-export inspection and concurs fully in the implementation of user fees in order to recover these costs from the importers.

Miscellaneous animal diseases and pests.—The House recommended a reduction of $550,000 from the budget request for miscellaneous diseases and pests. The Committee recommends a reduction of $300,000 instead, and restoration of $250,000 to the House bill to insure that needed work can be funded.

Pseudorabies.—The Committee concurs in the House increase of $511,000 above the budget for pseudorabies control.

Screwworm and biocontrol feasibility study.—The Committee concurs in an increase of $369,000, provided in the House bill above the budget, for the screwworm program. An increase of $100,000 above the budget, proposed in the House bill for a feasibility study of converting the Mission, Tex. plant to a general biocontrol plant, is not concurred in by the Committee and has been deleted. The Department is directed to undertake this study within available funds.

Tuberculosis eradication.—The Committee does not concur with the increase of $1,446,000 added above the budget by the House for tuberculosis, since the incidence of tuberculosis is at a very low level, and the $5,248,000 program in the budget will be adequate to control the disease.

Gypsy moth.—The House provided an increase over the budget of $1,250,000 for the gypsy moth program. The Committee concurs with a $1,000,000 increase, and has deleted the other $250,000.

Japanese beetle.—The House added $700,000 above the budget request for additional control efforts on Japanese beetle. The Committee has deleted $300,000 of this increase, since it believes these funds, in connection with available funds in miscellaneous plant diseases and pests, will be sufficient to accomplish the required airport treatments. The Committee concurs in the House recommendation to establish a separate project item for Japanese beetle.

Miscellaneous plant pests and diseases.—The Committee concurs in a House- proposed reduction of $250,000 from the budget request for miscellaneous plant pests and diseases.

Pink bollworm.—The Committee recommends deletion of a House increase to the budget of $1 million for pink bollworm. Increased costs aimed specifically at eradication of the pest in the cotton industry in the San Joaquin Valley of California should be borne by the growers who would benefit from such a program.

Animal welfare.—The House recommended an increase of $638,000 over the budget for enforcement of the Animal Welfare Act. The Committee recommends deletion of $219,000 of this amount, thereby providing an increase of $419,000 over the budget request.

Cattle fever ticks.—The Committee recommends an increase of $1,000,000 above the budget for cattle fever ticks, in lieu of the House-proposed increase of $1.5 million. These funds are to be used to begin eradication of the fever tick in Puerto Rico, which would

remove the threat of serious economic loss there and eliminate the threat of spread to the United States.

Contingency fund.—The Committee concurs in the House-proposed increase of $500,000 above the budget for the contingency fund.

Horse protection.—The Committee concurs with the House-proposed increase of $100,000 above the budget provided for enforcement of the Horse Protection Act to improve compliance.

Cattle scabies.—The Committee does not concur with the House proposal to increase control efforts by $3,500,000 above the budget level. The expanded program is not recommended at this time; however, $500,000 above the budget request is recommended for development of a plan for eradication of cattle scabies.

Contagious equine metritis.—The Committee concurs in the House-proposed increase of $500,000 above the budget for control of this disease; however, as in the case of the research funding, directs that these funds be matched by State, industry and local government on a cumulative basis in an equitable manner to be determined by the Department rather than on a year-by-year basis. As in the case of the research funding discussed earlier, consideration shall be given to including in-kind contributions.

Salmonella typing.—The Committee has deleted an increase of $360,000 above the budget for salmonella typing and identification that is included in the House bill. The Committee does not believe this can provide for a viable program at this time.

West Indian sugarcane root borer.—The Committee deleted $500,000 above the budget added by the House for the West Indian sugarcane root borer, since current efforts underway by the State of Florida and the Commonwealth of Puerto Rico are believed to be adequate to retard the spread of this pest from the current infested area.

Transfer of personnel.—The Committee has concurred in a House reduction of $106,000 from the budget request for nonreimbursable detailed personnel who have now been transferred to the Office of the Secretary and Departmental Administration for funding.

Noxious weeds.—The Committee recommends an increase of $1,700,000 over the budget and House allowance for the noxious weed program under the Federal Noxious Weed Act of 1974. This consists of $200,000 for a cooperative program on hydrilla, to be conducted with the State of Florida, and $1.5 million to begin implementation of the act nationwide through a demonstration program.

Facilities.—It has come to the attention of the Committee that there exists a facilities need in which the Animal and Plant Health Inspection Service could be of considerable help to the Food and Drug Administration. The FDA requires a modest amount of space for the laboratory needs of the Bureau of Veterinary Medicine in Beltsville, Md. Existing facilities for this operation are clearly inadequate and will eventually be replaced as part of FDA's headquarters laboratory complex. However, since this new facility will not be available for occupancy for approximately five years, FDA's scientific capabilities would benefit from immediate interim relocation to more suitable quarters. The Committee is also aware that

APHIS will be relocating some of its employees to Ames, Iowa in the near future. Therefore, the Committee feels that much good could be accomplished if APHIS could provide the FDA with a portion of the space which will be vacated by this relocation. The Committee urges that responsible officials of the two agencies work together to accomplish this temporary use of facilities.

Tri-fly eradication.—The Committee last year noted that the State of Hawaii is the only place in the Nation where the Mediterranean fruit fly, the Oriental fruit fly and the Melon fly—some of the most potentially destructive agricultural pests in the world—occur together, and directed that the Secretary of Agriculture submit a report on the feasibility of conducting an eradication program in the State.

The Secretary has advised that the technology for eradicating these fruit flies from Hawaii is available, and has submitted an optimum 6-year eradication plan. The Committee is pleased that the Department's budget request includes funds to start the proposed eradication program. The Committee is concerned that the Department has not yet worked out an acceptable cost-sharing formula with the potential cooperators. Such agreement at an early date is essential if the proposed eradication program is to be successful. The Committee therefore, urges the Secretary to use his best efforts towards resolving this issue.

Food Safety and Quality Service

1978 appropriation	[1]
1979 budget estimate	$271,475,000
House allowance	271,019,000
Committee recommendation	271,104,000

[1] Formerly funded under Animal and Plant Health Inspection Service.

The Food Safety and Quality Service was established on March 14, 1977, and is responsible for programs formerly performed by the Animal and Plant Health Inspection Service and the Agricultural Marketing Service.

The major objectives of the Service are to insure that the public receives foods that are safe, wholesome, nutritious, and appropriately labeled. This is carried out by inspecting, certifying, standardizing, and grading certain agricultural commodities.

In addition, the Service assists producers and consumers in differentiating between products by applying nationally uniform standards of quality in grading agricultural products. Also assistance is provided to both consumers and producers by purchasing surplus agricultural commodities for use in domestic feeding programs.

These objectives are carried out under four major activities:

1. Meat and Poultry Inspection: Provides continuous inplant inspection of all plants preparing meat or poultry products for sale or distribution in commerce, reviews inspection systems in foreign establishments preparing meat or poultry products for export to the United States, and provides technical and financial assistance to States maintaining meat and poultry inspection programs.

2. Commodity Purchase Services: Supports domestic food assistance programs by removing surpluses from regular market chan-

nels, thereby providing price assistance to producers and commodities.

3. Egg Products Inspection: Provides continuous inplant inspection of all plants manufacturing liquid, frozen, and dried egg products, visits quarterly, shell egg handlers and hatcheries to insure the proper disposition of restricted eggs, and controls the importation of egg products to insure that production is under an inspection system equal to the U.S. system. The inspections are performed to provide the consumer with wholesome, unadulterated, and properly packaged and labeled eggs and egg products.

4. Voluntary commodity inspection and grading program: Establishes and maintains uniform standards of quality on a nationwide basis for individual commodities. These standards are used in providing inspection and grading services, upon request, for fruits and vegetables, dairy, and meat and poultry products on a fee-for-service basis. Certification of grade by the service facilitates trade and helps assure that consumers obtain quality products.

Most of the Services' field work is conducted by inspectors and graders located in over 10,300 establishments—including approximately 120 packing plants authorized to perform import inspection—and at 167 official import inspection facilities in the 50 States, Puerto Rico, American Samoa, and the Virgin Islands. Much of the work is conducted in cooperation with Federal, State, and municipal agencies, Foreign governments, and private industry and consumer groups.

For the Food Safety and Quality Service for fiscal year 1979, the first year of this new appropriation, the Committee recommends an appropriation of $271,104,000. This is $371,000 less than the budget estimate, and $85,000 above the amount provided in the House bill.

The Committee recommends concurrence in the House reduction of $288,000 for transfer of nonreimbursable detailed personnel to the Office of the Secretary and Departmental Administration. In addition, the Committee has made a reduction of $25,000 for congressional liaison as discussed previously in the report.

The Committee does not concur with the House reduction of $168,000 from the budget for supergrades, and recommends restoration of $110,000 of this amount, for a net reduction of $58,000 below the budget request. The Committee notes that the Food Safety and Quality Service was derived by transfers from the Animal and Plant Health Inspection Service and Agricultural Marketing Service. Apparently, all supergrade positions were not transferred in accordance with mission responsibilities, hence the need for additional supergrades. This item is further discussed under the Agricultural Marketing Service, where a reduction in supergrade funding is recommended.

FUNDS FOR STRENGTHENING MARKETS, INCOME AND SUPPLY (SECTION 32)

Under section 32 of the Act of August 24, 1935, as amended, 30 percent of customs receipts collected during each calendar year are automatically appropriated for expanding outlets for nonbasic commodities. Most of the funds are transferred to the Food and Nutrition Service and are dedicated to commodity distribution activities

under section 6 of the national school lunch and other authorities specified in the child nutrition appropriation.

If surpluses of nonbasic commodities not presently foreseen should develop, the unused section 32 balance is available for surplus removal.

The Committee recommends a program that will provide for an unobligated balance of $225 million to be carried forward to fiscal year 1980, as proposed in the budget estimate. This is similar to the $237,696,000 unobligated balance brought forward from 1977 to 1978. It is $75 million less than the unobligated balance proposed for availability in the House bill.

Cooperative State Research Service

1978 appropriation	$143,150,000
1979 budget estimate	158,150,000
House allowance	163,957,000
Committee recommendation	179,520,000

This appropriation finances payments to agricultural experiment stations under the Hatch Act, the cost of penalty mailing, grants for cooperative forestry research, contracts and grants for scientific research, funds for research under the Rural Development Act of 1972, and the cost of Federal administration, including the Current Research Information System which provides information on research programs of the State agricultural experiment stations.

For the Cooperative State Research Service for fiscal year 1979, the Committee recommends an appropriation of $179,520,000. This is $36,370,000 above the amount provided in 1978, $16,463,000 above the House bill and $21,370,000 over the budget estimate.

Individual adjustments to the House bill are discussed below.

Payments to agricultural experiment stations under the Hatch Act, and penalty mail.—The Committee concurs in the House recommendation to increase formula payments by $11,072,000. In addition, the Committee recommends a further increase of $4,800,000 in such formula payments, to assist States in financing pay raises of up to 5.5 percent. The total provided for Hatch Act grants is $113,866,000. This is $4,800,000 more than the amount provided in 1978.

Cooperative forestry research.—The Committee concurs in a House-recommended increase of $950,000 above the budget request for cooperative forestry research. This provides a program in 1979 of $9,500,000, the same level as in 1978.

Payments to 1890 Colleges, Tuskegee Institute and penalty mail.—The Committee recommends a total of $17,060,000 for payments to the 1890 Colleges, Tuskegee Institute and for penalty mail. This is $2,360,000 more than the budget estimate, and $700,000 above the House bill.

Competitive and special research grants.—The House proposed a reduction of $30 million in the budget request for the competitive grants program, but provided increases over the budget for special research grants totaling $19,725,000 as follows:

Rural development centers	$300,000
Dried bean research	25,000
Mesquite research	100,000
Cattle fever ticks	100,000
Range caterpillar	1,500,000
Human nutrition	5,000,000
Solar research	2,500,000
Soybean cyst nematode	150,000
Bean and beets research	50,000
Animal health and plant research	10,000,000

The Committee recommends provision of the full amount requested, $30,000,000, for the competitive grants program. Funding for competitive grants was first provided in 1978, and a large number of applications for the relatively small program of $15 million has been received. The Committee believes this program has great promise and potential for making significant advances in basic agricultural research, and is recommending expansion rather than elimination as proposed by the House. This program is the first major new initiative in basic research and funding technique proposed for agricultural research for many years.

With respect to the administration of the competitive research grants, 1978 appropriations are being used to fully fund various grants for a period of 2 to 3 years. The Committee believes that these grants would be more effective if funding of a portion of them (not over one-third of the funds) were recommended for a period of 3 to 5 years. Progress made on each grant would be reviewed annually, and based on that review, would be recommended for continuation or termination. The Department should keep the Committee advised of progress in this grants program.

The Committee does not concur in House-proposed increases for any of the special research grants, with the exception of $150,000 provided for research in soybean cyst nematode, with which it does concur. In addition, the Committee recommends an increase of $38,000 for mushroom byproduct utilization research. The Committee believes that these special grant programs are not of sufficient priority to warrant funding above the budget proposals at this time.

Rural Development Research.—The Committee does not concur with the House increase of $1,500,000 above the budget for rural development research under title V of the Rural Development Act, and accordingly, has deleted these funds. However, rural development is considered a priority item within funding available for the Cooperative State Research Service. The Committee will expect the States to continue rural development research efforts as part of their ongoing program.

Research grants for alcohol fuels.—The Committee has provided $2 million to implement a competitive grant program on alcohol fuels for colleges and universities in accordance with sec. 1419 of the 1977 farm bill. The Committee intends that these funds will be used to supplement efforts funded by university or State funds. The grants will be used for research related to the production and marketing of alcohols and industrial hydrocarbons from agricultural commodities and forest products, and agricultural chemicals and other products from coal derivatives.

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Extension Service

1978 appropriation	$257,221,000
1979 budget estimate	262,047,000
House allowance	276,747,000
Committee recommendation	273,926,000

The primary function of the nationwide system of cooperative extension work is out-of-school applied education in agriculture, home economics, community development, 4-H youth programs, and related subjects. This educational work takes research results, technological advancements, and program facts of the Department of Agriculture, the State agricultural colleges and experiment stations, and incorporates them into a program for action. The Cooperative Extension Service interprets, disseminates, and encourages practical use of knowledge. It transmits information from researchers to people.

This appropriation provides for payments to States under the Smith-Lever Act, including nutrition education, and for the cost of Federal administration and coordination of extension programs.

For the Extension Service for fiscal year 1979, the Committee recommends an appropriation of $273,926,000. This is $16,705,000 above the amount appropriated in 1978, $11,879,000 above the budget estimate and $2,821,000 less than the amount provided in the House bill.

The Committee recommends a total of $10,412,000 for funding of grants to the 1890 colleges and the Tuskegee Institute. This is $399,000 more than the House allowance and $1,079,000 above the budget estimate.

The Committee has provided a total of $186,831,000 for payments under the Smith-Lever Act, an increase of $10,800,000 over the House bill and budget estimate. This includes an increase of $6.7 million for payments to States to assist in providing pay raises of up to 5.5 percent, and $4.1 million for retirement benefits.

The House recommended increases above the budget totaling $10,020,000 for the following items: $1 million for rural development activities; $1,020,000 for farm safety programs; $3 million for urban gardening; $2,500,000 for model solar farms; and $2,500,000 for the expanded food and nutrition education program. The Committee does not concur with these increases, and has deleted them from the bill. Most of these activities can be carried on using other funds available to State extension services either through matching grants or direct State funding. The Committee believes that within available Extension funding, emphasis should be placed on continuation of the urban gardening program.

The expanded food and nutrition education program has served as the Nation's principal program to reach low-income families with practical nutrition education. Utilizing paraprofessional "nutrition aides" who come from the same communities that they serve, the program has afforded thousands of low-income families lasting and useful nutritional benefits. The close interaction of the nutrition aides with the clients of the program has been demonstrated to be a highly effective means of changing dietary patterns. The Committee appreciates the concern that other lower cost but less intensive

mechanisms be explored to broaden the reach of the Department's nutrition education efforts, especially in light of the tightening fiscal constraints on the Federal budget. The Committee, however, feels that the proven format of the EFNEP program should not be materially altered, nor funds for the program be utilized for other means of nutrition education without prior notification and approval of the Appropriations Committees of the Congress.

The House recommended an increase over the budget of $2,500,000 for funding of title V rural development activities. The Committee has deleted this increase and as with the Cooperative State Research Service, expects the States to consider rural development to be a priority program using funding available under sections 3 (b) and (c) of the Smith-Lever Act. In terms of Federal support, this currently amounts to $20 million. The Committee also expects that, in using these rural development funds, the States will incorporate local input into the priority setting for rural development research and application by the Extension Service.

The Committee does not concur with the House proposed funding of $1,500,000 above the budget request for miscellaneous marketing programs.

It has come to the attention of the Committee that the Extension Service has de-emphasized its work with commodity organizations under its current reorganization plan. Cooperative efforts with these organizations in the past have been highly successful in reaching agricultural producers with new marketing and production techniques especially with respect to the wheat industry. The Committee, therefore, directs the agency to give further attention to providing a wheat extension specialist within its organization so that this valuable interaction can continue.

National Agricultural Library

1978 appropriation	$6,877,000
1979 budget estimate	7,631,000
House allowance	7,527,000
Committee recommendation	7,527,000

The National Agricultural Library, in cooperation with the Library of Congress and the National Library of Medicine, provides coverage and servicing of worldwide publications in the agricultural, chemical, and biological sciences. It serves all of the Department programs in the Washington metropolitan area, as well as the field installations throughout the country and has the added responsibility of service to the land-grant universities, and the world agricultural science community.

For the National Agricultural Library for fiscal year 1979, the Committee recommends an appropriation of $7,527,000. This is $650,000 more than the amount appropriated for 1978, $104,000 below the budget estimate, and the same as provided in the House bill. The Committee concurs in House reductions of $4,000 for transfer of nonreimbursable personnel to the Office of the Secretary, and $100,000 for the Food and Nutrition Information Center.

Economics, Statistics and Cooperatives Service

1978 appropriation	[1] $70,230,000
1979 budget estimate	80,008,000
House allowance	79,860,000
Committee recommendation	80,137,000

[1] Provided in three separate appropriations.

The Economics, Statistics and Cooperatives Service was established by consolidation of the Economic Research Service, Statistical Reporting Service, Farmer Cooperative Service and the Economic Management Support Center.

The three major missions of the Service are: (1) to formulate, develop and administer programs of economic research, analysis and information related to food, agriculture and rural resources and communities; (2) to formulate, develop, and administer programs of collecting and publishing statistics related to food, agriculture and rural resources and communities; and (3) to formulate, develop and administer research technical assistance programs on financial, organization, management, legal, social and economic aspects of agriculturally related cooperatives. The work includes forecasts and long-range projections of use and availability of food and fiber as well as estimates of societal needs); crop and livestock estimates (including acreage, yield and production); statistical research and service (review and coordination of data gathering surveys conducted by the Department as well as research on improving statistical methods and techniques for producing agricultural statistics) and research and technical assistance for agricultural cooperatives.

For the Economics, Statistics and Cooperatives Service for fiscal year 1979, the Committee recommends an appropriation of $80,137,000. This is $129,000 above the amount requested in the budget, and $277,000 above the amount provided in the House bill. It is the first year of funding for the Service as a separate appropriation account.

The Committee does not concur in the House reduction of $738,000 of the budgeted increase for improvement of price statistics, and has restored this amount to the bill. These funds will be required for funding of the prices received program for livestock and poultry items in 20 major States.

In connection with price data, the Committee believes that additional data is required to improve price support program decisionmaking. Data now provided by ESCS is highly aggregated. Data disaggregated by production regions and sub-regions would provide much of the information needed to improve decisionmaking in the price support programs. Also, data on production costs and returns to net equity by farm sales classes, by net farm income classes, and by farm organization (i.e. sole proprietor, partnership, family corporation, or corporation) would show if there is any correlation between the size or type of producer and the cost of production. Within the existing resources of ESCS, such information should be provided in the future.

The House bill added $94,000 above the budget for data collection on commodities produced in three or fewer States. The Committee has deleted this proposed increase, and recommends that the pro-

ducing States assume these activities if they are of sufficiently high interest to them.

An increase of $50,000 above the budget estimate was included in the House bill for the Western Livestock Marketing Report. The Committee concurs in this increase.

The House recommended that $500,000 be added above the budget estimate for research and technical assistance to cooperatives. The Committee has deleted this increase, and believes that the $3,740,000 provided in the bill will be adequate for such research and assistance.

The Committee concurs in the House recommendation to reduce the budget request by $54,000 for the transfer of nonreimbursable details to the Office of the Secretary.

The Committee also recommends the addition of $133,000 above the budget estimate to complete the study of foreign investment in U.S. farmland that is scheduled to begin in 1978. It is anticipated that only part of the study can be completed in 1978, hence the need for these additional funds.

The Committee has been advised that additional funds are not necessary to meet the currently anticipated demand for producer newsletters and has consequently deferred providing an increase for this valuable new initiative in providing agricultural producers with timely and accurate information. The Department is expected to submit a supplemental budget request should further funding become necessary.

Agricultural Marketing Service

MARKETING SERVICES

1978 appropriation	$48,484,000
1979 budget estimate	49,231,000
House allowance	46,502,000
Committee recommendation	49,070,000

These activities assist producers and handlers of agricultural commodities through various marketing and regulatory services. These services continue to expand and become more complex as the volume of agricultural commodities increases, as a greater number of new processed commodities are developed, and as the market structure undergoes extensive changes. Marketing changes include increased concentration in food retailing, direct buying, decentralization of processing, growth of interregional competition, vertical integration, and contract farming. The individual activities include a market news service, inspection, grading, classing, and standardization services, regulatory activities covering the administration of laws intended to prevent financial loss resulting from deceptive, careless, and fraudulent marketing practices. Also, the work includes administration of the Packers and Stockyards Act, which involves maintaining effective competition and fair play in the marketing of livestock, meat, and poultry.

The budget estimates contain $4,678,000 for administration of marketing agreements and orders. This item was previously funded through section 32.

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For the Agricultural Marketing Service for fiscal year 1979, the Committee recommends an appropriation of $49,070,000. This is $586,000 above the 1978 appropriation, $161,000 below the budget estimate, and $2,568,000 more than the amount in the House bill.

The Committee does not concur with the House recommendation that the costs of administering Marketing Agreements and Orders be paid from section 32 funds. Accordingly, $4,678,000, the same amount as proposed in the budget, has been added to the bill in order to provide for direct funding.

The House bill provides an increase of $2,000,000 over the budget request for research on the wholesale market development program. The Committee has deleted this increase, since it believes that city planners and the private sector do not require additional Federal research inputs in order to build future wholesale markets. In addition, such research activities are not compatible with the mission of this agency.

The Committee concurs with the House reduction of $51,000 for transfer of nonreimbursable personnel to the Office of the Secretary.

In addition, the Committee recommends a reduction of $110,000 below the budget for supergrade positions within the Agricultural Marketing Service. The Committee believes this is possible since, prior to the establishment of the Food Safety and Quality Service, the Agricultural Marketing Service had eight commodity divisions, six of which were headed by supergrades. While four of these divisions were transferred out of AMS, only one supergrade position was transferred. The other five supergrades remained in AMS. Accordingly, the Committee partially restored funding for supergrades in the Food Safety and Quality Service, and made a corresponding reduction here. The actions in this case are an unacceptable example of "grade creep" that occurs in a reorganization or the creation of new agencies.

PAYMENTS TO STATES AND POSSESSIONS

1978 appropriation	$1,600,000
1979 budget estimate	
House allowance	2,000,000
Committee recommendation	

Payments have been made in previous years on a matching basis to State marketing agencies for carrying out specifically approved marketing service programs designed to bring about improved marketing. Under this activity, marketing specialists have worked with farmers, marketing firms, and agencies in solving marketing problems and in utilizing marketing research results.

The Committee has deleted the $2,000,000 added by the House above the budget estimate for these payments. In earlier years, the program served its purpose well in helping develop ongoing State marketing service programs by providing temporary matching funds to pilot-test promising ideas for State marketing work. In 1946 when the program was initiated, State Departments of Agriculture provided only limited marketing services. Over the years, most States have made good use of the Federal matching funds available under the

program to assist in the development of ongoing State marketing service programs. As a result, nearly all current State marketing services are carried out with State funds.

During the past 2 fiscal years—1976 (including transition quarter) and 1977—although the amount available was $2,000,000 and $1,600,000 respectively, only $241,000 and $254,000, or 12 percent and 16 percent were actually distributed to States because of their diminishing interest.

World Food and Agricultural Outlook and Situation Board

1978 appropriation	
1979 budget estimate	$1,009,000
House allowance	1,009,000
Committee recommendation	1,009,000

The World Food and Agricultural Outlook and Situation Board serves as the single focal point for the Nation's economic intelligence related to domestic and international food and agriculture with the responsibility for coordinating and reviewing for clearance all commodity and aggregate agricultural and food related data used to develop outlook and situation material within the Department of Agriculture. The Board's primary objective is to improve the consistency, objectivity, and reliability of outlook and situation material being disseminated to the public.

The Board's functions include information dissemination, market surveillance coordination of international and domestic agricultural developments; coordination of weather, climate and remote sensing research, and forecasting techniques.

For the World Food and Agricultural Outlook and Situation Board, which is being funded as a separate entity for the first time this year, the Committee recommends an appropriation of $1,009,000. This is the same as the budget request and House allowance.

Farm Income Stabilization

Agricultural Stabilization and Conservation Service

SALARIES AND EXPENSES

1978 appropriation	$161,838,000
1979 budget estimate	227,816,000
House allowance	227,552,000
Committee recommendation	217,527,000

The account "Salaries and Expenses, Agricultural Stabilization and Conservation Service" funds the administrative expenses of programs administered by, and the functions assigned to ASCS. The funds consist of direct appropriations, transfers from the Commodity Credit Corporation (CCC), and miscellaneous advances from other sources.

Activities carried out under this program include program formulation and appraisal, operation of supply adjustment, conservation, and support programs, and inventory management and merchandising.

For Agricultural Stabilization and Conservation Service, Salaries and Expenses for fiscal year 1979, the Committee recommends an appropriation of $217,527,000. This is $55,689,000 more than the amount appropriated in 1978, $10,289,000 less than the budget request, and $10,025,000 less than the amount provided in the House bill.

In addition to the appropriated amount above, the Committee recommends a transfer of $99,865,000 from the Commodity Credit Corporation for administration of CCC programs. This is $23,450,000 more than was available from this source in 1978 and is the same as the budget estimate and the House allowance.

The Committee has questions concerning the county office workload of the Service, and has requested a review by the General Accounting Office. Between 1978 and 1979, the budget for that workload increased from $176,228,000 to $239,216,000 or $62,988,000. The Committee has, without prejudice, recommended a reduction of $10,000,000 below the budget request, but will reconsider this reduction after the General Accounting Office has completed its work and advised the Committee of its findings. Additional funding can be included in the 1979 pay supplemental.

The Committee concurs in a House-recommended reduction of $264,000 for the transfer of nonreimbursable details to the Office of the Secretary.

In addition, as discussed earlier, the Committee recommends a reduction of $25,000 in the congressional liaison activities of the agency.

Dairy and Beekeeper Indemnity Programs

1978 appropriation	$4,050,000
1979 budget estimate	3,240,000
House allowance	3,240,000
Committee recommendation	3,240,000

Under this program, the Department makes indemnification payments to dairy farmers, manufacturers of dairy products, and beekeepers. This includes payments to dairy farmers who were directed to remove their milk from commercial markets because it contained residues of chemicals registered and approved for use by the Federal Government, and payments to beekeepers who, through no fault of their own, have suffered losses of honey bees after January 1,1967, as a result of utilization of economic poisons near or adjacent to the property on which the beehives of such beekeepers were located.

For the Dairy and Beekeeper Indemnity programs for fiscal year 1979, the Committee recommends an appropriation of $3,240,000. This is $810,000 below the amount provided in 1978, and is the same as the budget estimate and the amount included in the House bill.

CORPORATIONS

FEDERAL CROP INSURANCE CORPORATION

ADMINISTRATIVE AND OPERATING EXPENSES

	Appropriation	*Premium Income*	*Total*
1978 appropriation	$12,000,000	($11,413,000)	($23,413,000)
1979 budget estimate	12,000,000	(12,669,000)	(24,669,000)
House allowance	12,000,000	(12,669,000)	(24,669,000)
Committee recommendation	12,000,000	(12,669,000)	(24,669,000)

The Federal Crop Insurance Corporation, a wholly owned Government Corporation, was created on February 16, 1938 (7 U.S.C. 1501–1520), to carry out the provisions of the Federal Crop Insurance Act. The purpose of this act is to promote the national welfare by improving the economic stability of agriculture through a sound system of crop insurance and to provide the means for the research and experience helpful in devising and establishing such insurance.

Crop insurance offered to agricultural producers by the Corporation provides protection from losses caused by natural hazards, such as insect and wildlife damage, plant diseases, fire, drought, flood, wind, and other weather conditions. It does not indemnify producers for losses resulting from negligence or failure to observe good farming practices.

Capital stock of $200,000,000 is authorized to be subscribed by the United States. Funds from the issuance of capital stock provide working capital for the Corporation. Receipts for deposit to this fund come mainly from premiums paid by farmers for crop insurance indemnity costs. The principal payments from this fund are for indemnities to insured farmers and for a part of the administrative and operating expenses. However, the direct cost of loss adjustment and the administrative and operating expenses paid from the fund are not provided for in the premium rates.

For the Federal Crop Insurance Corporation for fiscal year 1979, the Committee recommends an appropriation of $12,000,000 and use of premium income of $12,669,000. These are the same as the amounts requested in the budget and included in the House bill. They represent no change from the 1978 appropriation and an increase of $1,256,000 in use of premium income.

COMMODITY CREDIT CORPORATION

NEW BORROWING AUTHORITY

1978 appropriation	
1979 budget estimate	[1] $10,500,000,000
House allowance	5,500,000,000
Committee recommendation	10,500,000,000

[1] Although only $5.5 billion was formally transmitted, the administration formally testified that the request had been amended to $10.5 billion.

Public Law 95–279 authorized an increase in the borrowing authority of the Commodity Credit Corporation of $10,500,000,000. This additional borrowing authority will be needed to pay for the increased costs of the programs in the 1977 farm bill.

Although the President transmitted a request for only $5.5 billion of new borrowing authority, the Secretary of Agriculture testified to the Committee, subsequent to the House Committee action, that a request for $10.5 billion was the administration's position.

The Committee recommends the provision of $10.5 billion in new borrowing authority. This is the same as the administration's request, and $5 billion more than the House allowance. No funds were provided for this purpose in 1978.

REIMBURSEMENT FOR NET REALIZED LOSSES

1978 appropriation	$524,342,000
1979 budget estimate	990,900,000
House allowance	580,000,000
Committee recommendation	990,900,000

The Corporation was created to stabilize, support, and protect farm income and prices, help maintain balanced and adequate supplies of agricultural commodities, foods, feeds, and fibers, and help in their orderly distribution (15 U.S.C. 714–714p). It may also make available materials and facilities required in connection with the production and marketing of agricultural commodities. In addition to its basic functions, it is used to administer and, in some cases, temporarily finance numerous special activities.

The Corporation's capital stock of $100,000,000 is held by the United States. Up to $25,000,000,000 is authorized to be borrowed to finance operations. The Corporation reserves a sufficient amount of the borrowing authority to purchase at any time all loans and other obligations held by financial institutions under the Corporation's programs.

Under section 2 of Public Law 87–155 (15 U.S.C. 713a–11), annual appropriations are authorized for each fiscal year to reimburse the Corporation for net realized losses incurred as of the close of each year. The realized losses for 1977 subject to reimbursement were $824.2 million, and the prior cumulative losses not yet appropriated for were $166.7 million. An appropriation of $990.9 million in fiscal year 1979 would fully reimburse the Corporation for its unreimbursed realized losses through September 30, 1977.

For reimbursement of net realized losses, the Committee recommends an appropriation of $990,900,000. This is the same amount as the budget estimate, and $410,900,000 more than the House allowance. It will fully finance all realized losses through September 30, 1977. The Committee does not concur with deferring any portion of the reimbursement.

LIMITATION ON ADMINISTRATIVE EXPENSES

1978 limitation	($39,800,000)
1979 budget estimate	(50,100,000)
House allowance	(50,100,000)
Committee recommendation	(45,898,000)

Administrative expenses are for the services of the Agricultural Stabilization and Conservation Service, the Agricultural Marketing Service, and other agencies within and outside the Department engaged in the Corporation's activities, such as the General Ac-

counting Office for audit and the General Services Administration for space.

The requested authorization excludes administrative expenses in connection with the wool and mohair program under the National Wool Act of 1954, as amended, which are included with the cost of this program under special activities.

The Committee recommends a limitation of $45,898,000. This is $6,098,000 more than the fiscal year 1978 limitation and is $4,202,000 less than was requested in the 1979 budget and provided in the House bill. The Committee's recommended reduction is of funds allotted to the Office of the General Sales Manager. As discussed later in the report, this agency is being merged with the Foreign Agricultural Service and funded through direct appropriations. The Limitation on Administrative Expenses account, consequently, is offset by this amount.

The Committee has also placed a limitation of $2.2 billion on the export credit sales program, which is operated through the Commodity Credit Corporation. The House had included a limitation of $1.7 billion, but the Committee believes that the extra flexibility would be very desirable.

The 1977 farm bill (Public Law 95-113, sec. 1420) authorized a series of pilot projects for production and marketing of industrial hydrocarbons and alcohols from agricultural commodities and forest products. Such pilot projects were to be financed with loans guaranteed by the Commodity Credit Corporation. The Committee herein approves the utilization of the maximum value of loan guarantees (4 projects at up to $15 million each), as long as the necessary conditions are met (total energy output will exceed total energy input from fossil fuels).

TITLE II—RURAL DEVELOPMENT AND ASSISTANCE PROGRAMS

RURAL DEVELOPMENT ASSISTANCE

FARMERS HOME ADMINISTRATION

The Farmers Home Administration provides credit for those in rural America who are unable to get credit from other sources at reasonable rates and terms. The agency also administers several grant programs.

The agency operates principally under the Consolidated Farm and Rural Development Act (7 U.S.C. 1921) and title V of the Housing Act of 1949 (42 U.S.C. 1471).

The Farmers Home Administration makes loans with funds borrowed from the U.S. Treasury. These loans are then sold to private lenders under an insurance agreement and the Treasury is repaid.

The following table reflects the loan and grant program levels of programs administered by the agency, proposed in the budget, reflected in the House bill, and recommended by the Committee.

LOAN AND GRANT LEVELS

[In millions of dollars]

	1978 level	1979 budget	House bill	Committee recommendation
TYPE OF LOAN				
Rural housing insurance fund:				
Low-income housing loans (sec. 502) [1]	1,900.0	2,067.0	2,067.0	2,067.0
Moderate-income housing insured	775.00	614.0	800.0	800.0
Guaranteed housing	900.0	.....	.....	500.0
Rural housing site development (sec. 524) [1]	3.0	1.2	1.2	3.0
Rural rental housing (sec. 515) [1]	690.0	868.0	868.0	868.0
Very low-income housing repair (sec. 504) [1]	15.0	24.0	24.0	24.0
Mobile home park	1.0	.....	.....	.....
Domestic farm labor (sec. 514) [1]	10.0	38.0	38.0	38.0
Subtotal, rural housing insurance fund	4,294.0	3,612.2	3,798.2	4,300.0
Agricultural credit insurance fund:				
Farm ownership (Insured)	550.0	550.0	750.0	750.0
Farm ownership (Guaranteed)	.....	.....	50.0	50.0
Farm operating (Insured)	825.0	825.0	800.0	800.0
Farm operating (Guaranteed)	.....	.....	25.0	25.0
Soil and water	54.0	58.0	58.0	58.0
Grazing	4.0	4.4	4.4	4.4
Indian land acquisition	10.0	11.0	11.0	11.0
Recreation	2.0	2.2	2.2	2.2

LOAN AND GRANT LEVELS —Con.

[In millions of dollars]

	1978 level	1979 budget	House bill	Committee recommendation
TYPE OF LOAN				
Agricultural credit insurance fund: — Con.				
Emergency	1,200.0	578.0	578.0	578.0
Soil conservation	27.0	30.0	30.0	30.0
Subtotal, agricultural credit insurance fund	2,672.0	2,058.6	2,308.6	2,308.6
Rural development insurance fund:				
Water and waste disposal	750.0	800.0	900.0	900.0
Community facility loans	250.0	250.0	250.0	250.0
Industrial facility loans	1,000.0	1,100.0	1,100.0	1,100.0
Subtotal, rural development insurance fund	2,000.0	2,150.0	2,250.0	2,250.0
TYPE OF GRANT				
Section 111 rural development planning	5.0	.....	5.0	5.0
Water and waste disposal	250.0	265.0	300.0	300.0
Farm labor housing	7.5	38.0	38.0	38.0
Mutual and self-help housing	9.0	16.5	16.5	16.5
Business and industrial	10.0	10.0	10.0	10.0
Home repair (sec. 504) [1]	9.0	24.0	24.0	24.0
Housing technical and supervisory (sec. 525) [1]	.....	.....	2.5	2.5
Rural community fire protection	3.5	.....	3.5	3.5
Self help housing site development fund capitalization	.....	.....	.....	1.0
Subtotal,	294.0	353.5	399.5	400.5
Total, loans and grants	8,934.0	7911.3	8,303.3	9,015.1

[1] Section number in title V of the Housing Act of 1949.

RURAL HOUSING INSURANCE FUND

The Rural Housing Insurance Fund was established under the authority contained in section 1003(a) of the Housing and Urban Development Act of 1965 (Public Law 89-117), approved August 10, 1965. Public Law 89-117 authorized an appropriation of such sums as may be necessary for the purposes of the fund. An appropriation of $100,000,000 was provided by the Supplemental Appropriation Act, 1966 (Public Law 89-409) to capitalize the fund for future operations.

This fund may be used to insure or guarantee rural housing loans, loans for rural rental and cooperative housing, farm labor housing loans, rural housing site loans and mobile home park loans. Beginning in fiscal year 1978, rental assistance payments will also be made from the fund. Loan programs are limited to rural areas which include towns, villages, and other places of not more than

10,000 population, which are not part of an urban area, and areas with a population in excess of 10,000 but less than 20,000 if such area is not included in a standard metropolitan statistical area and has a serious lack of mortgage credit for low and moderate income borrowers.

This fund provides a variety of loans, within the income categories mentioned, including the following low-income housing assistance: Subsidized loans for repairs, general purpose, domestic farm labor and rental or cooperatives. Unsubsidized loans for low-income persons include general purpose loans and site loans.

Moderate income housing assistance is provided in the following form: Unsubsidized loans for general purposes, rental or cooperative loans, site loans and mobile home park loans.

DIRECT LOANS

1978 loan level	($15,000,000)
1979 budget estimate	(24,000,000)
House bill	(24,000,000)
Committee recommendation	(24,000,000)

Direct rural housing loans to individuals may be made on farms, in the open country, and in towns of not more than 10,000 population that are rural in character. These loans may also be made in towns of 10,000–20,000 population that are not located within standard metropolitan statistical areas, and have a serious lack of mortgage credit. In the case of applicants who are deficient in repayment ability, cosigners on promisory notes are permitted. These loans are made at 1 percent interest and are repayable in not more than 20 years.

The Committee recommends that $24,000,000 be provided for direct loans in 1979. This is $9 million above the 1978 loan level, and is the same as the 1979 budget request, and the level in the House bill.

INSURED LOANS

1978 loan level	($3,379,000,000)
1979 budget estimate	(3,588,200,000)
House bill	(3,774,200,000)
Committee recommendation	(3,776,000,000)

For insured loans for fiscal year 1979, the Committee recommends a level of $3,776,000,000. This is $397,000,000 more than was available for fiscal year 1978, $187,800,000 more than the budget request and $1,800,000 more than the amount provided in the House bill.

The Committee concurs in the House increase of $186,000,000 for moderate income housing loans. In addition, the Committee recommends an increase of $1.8 million above the budget and the House bill for rural housing site development loans.

GUARANTEED LOANS

1978 loan level	($900,000,000)
1979 budget estimates	( )
House allowance	( )
Committee recommendation	(500,000,000)

This program guarantees loans for housing made by local private lenders.

The Committee recommends a level of $500,000,000 for guaranteed housing loans. This is $500 million more than the budget estimate, $400 million less than made available in fiscal year 1978, and an increase of $500 million above the level provided in the House bill. The administration advised the Committee of its interest in pursuing a $500 million guaranteed loan program subsequent to House Committee action.

RURAL RENTAL ASSISTANCE

	Rent supplement authorization	*Reimbursement for rent supplement payments*
1978 level	($349,072,000)	$17,000,000
1979 budget estimate	(370,013,000)	43,740,000
House allowance	(370,013,000)	43,740,000
Committee recommendation	(555,000,000)	54,240,000

The Housing and Community Development Act of 1976 established a rural rental assistance program to be administered by Farmers Home Administration through the Rural Housing Insurance Fund.

The objective of the program is to reduce rents paid by low income families living in FmHA financed rental projects and farm labor housing projects. Under this program, low income tenants pay no more than 25 percent of their adjusted monthly income for rent. Payments from the fund are made to the project owner to make up the difference between the tenant's payment and the approved rental rate established for the unit.

The rent supplement authorization is the estimated rental assistance cost over the 5 and 20 year terms of the agreements for the planned number of units assisted. The House bill and budget estimate provided for 20,000 additional units in fiscal year 1979—the same as in fiscal year 1978. The Committee recommends an additional 10,000 units over the budget for a total of 30,000 new units.

For rural rental assistance, the Committee recommends an authorization of $555,000,000 which is $205,928,000 above the 1978 level, and $184,987,000 more than the budget estimate and House allowance.

This rent supplement authorization will result in fiscal year 1979 reimbursements of $54,240,000. This is $37,240,000 above the 1978 level and $10,500,000 more than the budget estimate and House allowance.

REIMBURSEMENT FOR INTEREST AND OTHER LOSSES

1978 appropriation	$327,402,000
1979 budget estimate	320,192,000
House allowance	320,192,000
Committee recommendation	320,192,000

This appropriation will be used to reimburse the Rural Housing Insurance Fund for funded losses incurred in fiscal year 1977. Section 521(c) of the Housing Act of 1949, as amended, authorizes annual appropriations to the Rural Housing Insurance Fund of the amounts by which interest payments made from the Fund to inves-

tors in insured loans exceed the interest due from borrowers. In addition, section 517(e) of the act authorizes appropriations to restore all other losses to the Fund. The amount requested is exclusive of provision for future losses, unfunded costs, and imputed interest.

For the reimbursement for losses for fiscal year 1979, the Committee recommends an appropriation of $320,192,000. This is $7,210,000 less than was appropriated for fiscal year 1978, the same as the budget request and the amount provided in the House bill.

AGRICULTURAL CREDIT INSURANCE FUND

The Agricultural Credit Insurance Fund is used to insure or guarantee farm ownership, soil and water, recreation, farm operating, and emergency loans to individuals, as well as the following types of loans to associations: Irrigation and drainage, grazing, recreation, Indian land acquisition, watershed protection, flood prevention, and resource conservation and development. The insurance endorsement on each insured loan may include an agreement by the Government to purchase the loan after a specified initial period.

Loans may be made by the fund from available receipts or Treasury borrowings. Loans made by the fund are held in a pool as security for certificates of beneficial ownership which are sold primarily to the Federal Financing Bank. FmHA is also authorized to provide financial assistance to borrowers by guaranteeing loans made by private lenders having a contract of guarantee from FmHA as approved by the Secretary of Agriculture. With respect to all new loans made from the fund, with the exception of emergency loans, not more than $500,000,000 may be held in the fund at any one time.

The following programs are financed through this fund:

Farm ownership loans.—Made to borrowers who cannot obtain credit elsewhere to improve or purchase farms, refinance nonfarm enterprises or make additions to farms at 5 percent interest, up to 40 years to repay.

Operating loans.—Provide short-to-intermediate term production or chattel credit to farmers who cannot obtain credit elsewhere at 8 percent interest, repayment period not to exceed 7 years, but may be renewed for not more than 5 additional years.

Emergency loans.—Made to farmers in Presidentially or Secretarially designated disaster areas to restore production. Made at 5 percent interest for actual losses and a market rate of interest for more than actual losses, and for the same general purposes as operating loans.

Emergency livestock loans.—Provide temporary emergency financing through guaranteed loans to bona fide farmers and ranchers who are primarily and directly engaged in livestock operations. Loan terms are agreed upon between the borrower and the lender.

Soil and water loans.—Made to associations, farmers, ranchers and nonoperator owners for land and water development, use and conservation. Loans are repayable in not more than 40 years and bear interest not in excess of 5 percent.

Grazing loans.—Generally made to associations of 3 or more ranchers for the purchase of grazing land to permit expansion of herds. Terms are 5 percent interest and 40-year repayment.

Indian tribe land acquisition loans.—Made to qualified Indian tribes or tribal corporations to acquire land or interests in land within the tribes' reservation or Alaskan Indian community, as determined by the Secretary of the Interior. Loans are repayable in not more than 40 years and bear interest not in excess of 5 percent.

Recreation loans.—Made to farmers and ranchers for converting all or a portion of the farms or ranches they own or operation to outdoor income-producing recreation enterprises which will supplement or supplant farm income and permit carrying on sound and successful operations. Loans are repayable in not more than 40 years and bear interest not in excess of 5 percent.

Watershed protection and flood prevention loans.—Made to sponsors of projects approved for operation by the Soil Conservation Service. Loans are made to local organizations for installing, repairing, or improving works of improvement and water storage facilities, purchasing sites of rights-of-way, and for related costs. These loans are repayable in not more than 50 years at an interest rate based on the average rate paid by the U.S. Treasury on obligations of similar maturity. The rate for the 1978 fiscal year is 6.063 percent. Total loans outstanding on any one project may not exceed $10,000,000.

Resource conservation and development loans.—Made to sponsors of projects approved for operation by the Soil Conservation Service. Loans are made to local organizations and individuals for planned conservation measures and works of improvement as specified in approved work plans. These loans are repayable in not more than 30 years with repayment of principal and interest deferred up to 5 years, if necessary. Loans bear interest at a rate based on the average rate paid by the U.S. Treasury on obligations of similar maturity. The rate for the 1978 fiscal year is 6.063 percent.

INSURED REAL ESTATE LOANS

1978 loan level	($620,000,000)
1979 budget estimate	(625,600,000)
House allowance	(875,600,000)
Committee recommendation	(875,600,000)

Included in this account are the following real estate loans to individuals: Farm ownership loans, recreation loans, and soil and water loans. Also included are irrigation and drainage loans, grazing loans, and Indian tribe land acquisition loans for associations and groups.

For insured real estate loans for fiscal year 1979, the Committee recommends a level of $875,600,000. This is $255,600,000 more than was provided in fiscal year 1978, $250,000,000 more than the budget request and the same as provided in the House bill. The Committee concurs in the increase in the House bill of $250 million for farm ownership loans.

The Committee concurs in the House allowance of $750 million for insured farm ownership and $50 million for guaranteed farm ownership loans. The Committee is highly supportive of loans on a guaranteed basis because of their lower interest cost to the Government. The Committee has also included a proviso tying interest

rates of a portion of the farm ownership loans to the cost of money as proposed in pending agricultural credit legislation.

SOIL CONSERVATION LOANS

1978 loan level	($27,000,000)
1979 budget estimate	(30,000,000)
House allowance	(30,000,000)
Committee recommendation	(30,000,000)

Under Public Law 87-566, as amended, and other existing Departmental authorities, loans are made to local sponsoring organizations and to individuals for financing the local share of the cost of installing, repairing or improving works of improvement and water storage facilities, purchasing sites or rights-of-way and for related costs in approved resource conservation and development projects and approved watershed works of improvement and flood prevention projects.

The Farmers Home Administration has been assigned responsibility for making these loans to sponsors of projects approved for operation by the Soil Conservation Service. No loan may be made until the Soil Conservation Service and the local organization have agreed on a plan for development work. Public Law 92-419, approved August 30, 1972, provided for making such loans on an insured basis under the Agricultural Credit Insurance Fund.

For the Soil Conservation Loans for fiscal year 1979, the Committee recommends a level of $30,000,000. This is $3 million more than was provided for fiscal year 1978, and is the same amount requested in the budget, and provided in the House bill.

OPERATING LOANS

1978 loan level	($825,000,000)
1979 budget estimate	(825,000,000)
House allowance	(825,000,000)
Committee recommendation	(825,000,000)

Subtitle B of the Consolidated Farm and Rural Development Act contains the authorization for insured operating loans. Operating loans made by the Farmers Home Administration are accompanied by supervisory assistance in farm and financial management. Operating credit is needed by family farmers throughout the United States who are unable to obtain credit from private and cooperative sources to develop a reasonable standard of living. The use of operating loan funds for this purpose helps to provide parity of opportunity to all rural people and to encourage farm families to remain in rural areas. The Rural Development Act of 1972 authorized operating loans to be made on an insured basis, and pending amendments also authorize loans on a guaranteed basis.

For operating loans for fiscal year 1979, the Committee recommends a level of $825,000,000. This is the same as the level provided in 1978, requested in the budget for 1979, and included in the House bill. In addition, the Committee has divided the farm operating loans and provided $800 million for insured and $25 million for guaranteed loans. Once again, the Committee endorses a shift to guaranteed loans because of their lower interest cost to the Government.

EMERGENCY LOANS [1]

1978 loan level	($1,200,000,000)
1979 budget estimate	(578,000,000)
House allowance	(578,000,000)
Committee recommendation	(578,000,000)

[1] Amounts shown are estimates. Actual language provides such sums as may be necessary.

Emergency loans are made in designated areas where a natural disaster has caused a temporary general need for agricultural credit which cannot be met by private, cooperative, or other responsible sources, including the Farmers Home Administration in its regular loan programs. Emergency loans are made to eligible established farmers, ranchers, or oyster planters and to private domestic corporations or partnerships engaged primarily in farming, ranching, or oyster planting. Emergency loans are made primarily for financing farm operating needs, family living expenses, and a number of closely related purposes and are not to exceed otherwise unreimbursed losses attributable to natural disasters. Loans bear interest not in excess of 5 percent and are repayable over periods not longer than the regular loans made by the Farmers Home Administration for similar purposes. Loans may be made outside of designated areas under certain conditions to persons or corporations who have suffered severe production losses not general to the area as a result of a natural disaster, or to persons who are indebted for emergency loans made under prior authorities.

The Committee has concurred in the language in the bill which authorizes the Secretary to make loans in an amount necessary to meet the needs resulting from natural disasters.

REIMBURSEMENT FOR INTEREST AND OTHER LOSSES

1978 appropriation	$164,735,000
1979 budget estimate	143,565,000
House allowance	143,565,000
Committee recommendation	143,565,000

The amount requested will reimburse the Agricultural Credit Insurance Fund for losses incurred through September 30, 1977. Losses result primarily from writeoff of uncollectable loans and interest costs incurred because of the difference between interest rates charged to borrowers and the rate which the Government must pay for its own borrowing.

For reimbursement for losses for fiscal year 1979, the Committee recommends an appropriation of $143,565,000. This is $21,170,000 less than was appropriated for fiscal year 1978, and the same as the budget request and the amount provided in the House bill.

RURAL DEVELOPMENT INSURANCE FUND

The Rural Development Insurance Fund was established on October 1, 1972, pursuant to section 309(A) of the Rural Development Act of 1972 (Public Law 92-419), approved August 30, 1972, which also provided for transfer of the assets and liabilities of the Agricultural Credit Insurance Fund applicable to loans for water systems and waste disposal facilities to this fund.

The fund is used to insure or guarantee loans for water systems and waste disposal facilities, development of rural business, community facilities, pollution abatement, and economic improvement in rural areas.

REIMBURSEMENT FOR LOSSES

1978 appropriation	$75,547,000
1979 budget estimate	107,276,000
House allowance	107,276,000
Committee recommendation	107,276,000

This appropriation is to reimburse the Rural Development Insurance Fund for funded losses incurred in fiscal year 1977.

For Reimbursement for Losses for the Rural Development Insurance Fund for fiscal year 1979, the Committee recommends an appropriation of $107,276,000. This is $31,729,000 more than was appropriated for fiscal year 1978,the same amount requested in the budget estimate for fiscal year 1979 and provided in the House bill.

WATER AND SEWER FACILITY LOANS

1978 loan level	($750,000,000)
1979 budget estimate	(800,000,000)
House allowance	(900,000,000)
Committee recommendation	(900,000,000)

Loans are made to organizations including certain Indian tribes and corporations not operated for profit, and public and quasi-public agencies, for the development, storage, treatment, purification, or distribution of water or the collection, treatment, or disposal of waste in rural areas.

For water and sewer facility loans for fiscal year 1979, the Committee recommends a level of $900,000,000. This is $150 million more than was provided for fiscal year 1978, $100,000,000 more than the budget request and the same as the level provided in the House bill.

INDUSTRIAL DEVELOPMENT LOANS

1978 loan level	($1,000,000,000)
1979 budget estimate	(1,100,000,000)
House allowance	(1,100,000,000)
Committee recommendation	(1,100,000,000)

These loans are made to public, private, or cooperative organizations organized for profit or nonprofit, to certain Indian tribes, or to individuals for the purpose of improving, developing, or financing business, industry, and employment, or improving the economic and environmental climate in rural areas. Such purposes include fi

nancing business and industrial acquisition, construction, enlargement, repair or modernization; financing the purchase and development of land, easements, rights-of-way, buildings, equipment, facilities, leases, machinery, supplies and materials; and payment of start-up costs and supplying working capital. Industrial development loans may be made in any area that is not within the outer boundary of any city having a population of 50,000 or more and its immediately adjacent urbanized and urbanizing areas with a population density of more than 100 persons per square mile. Special consideration for such loans is given to rural areas and cities having a population of 25,000 or less. Loans may be fully insured by FmHA or guaranteed by FmHA not to exceed 90 percent of the loss.

The Committee notes that the Farmers Home Administration presently limits participation in its business and industrial loan program to the processing and marketing phases of the poultry, hog, and livestock industry, while denying participation to the equally important and often more costly initial phases of these meat producing industries. Many farmers are engaged in one or more of these phases and some have a totally integrated meat producing system, for example, from the egg to a precooked frozen fried chicken, and it would appear that FmHA business and industrial loan program assistance should be extended to all phases of these industries.

The Committee, therefore, directs the FmHA to explore the feasibility of extending its business and industrial loan program to all phases of the meat producing industries, including but not limited to loans for all buildings and machinery for the production, processing and marketing of confined poultry and livestock. The results of this review should be submitted to the Committee within 45 days after the enactment of this bill.

For industrial development loans for fiscal year 1979, the Committee recommends a level of $1,100,000,000. This is $100,000,000 more than the level in fiscal year 1978 and is the same as requested in the budget request and provided in the House bill.

COMMUNITY FACILITY LOANS

1978 loan level	($250,000,000)
1979 budget estimate	(250,000,000)
House allowance	(250,000,000)
Committee recommendation	(250,000,000)

Loans are made to organizations, including certain Indian tribes and corporations not operated for profit, and public and quasi-public agencies, to construct, enlarge, extend, or otherwise improve community facilities providing essential services to rural residents. Such facilities include those providing or supporting overall community development such as fire and rescue services, health care, transportation, traffic control, and community, social, cultural, and recreational benefits. Loans are made for facilities which primarily serve rural residents of open country and rural towns and villages of not more than 10,000 population.

For community facility loans for fiscal year 1979, the Committee recommends a level of $250,000,000. This is the same as the level

requested in the budget, provided in 1978, and provided in the House bill.

Rural Grant Programs

RURAL WATER AND WASTE DISPOSAL GRANTS

1978 appropriation	$250,000,000
1979 budget estimate	265,000,000
House allowance	300,000,000
Committee recommendation	300,000,000

This grant program is authorized by subtitle A of the Consolidated Farm and Rural Development Act. Grants are authorized to be made to associations, including nonprofit corporations, public and quasi-public agencies, and certain Indian tribes to finance specific projects for the development, storage, treatment, purification, or distribution of water or the collection, treatment or disposal of waste in rural areas.

For rural water and waste disposal grants for fiscal year 1979, the Committee recommends an appropriation of $300,000,000. This is $50 million more than was appropriated for fiscal year 1978, $35 million more than the budget request and the same as the amount provided in the House bill.

VERY LOW-INCOME HOUSING REPAIR GRANTS

1978 appropriation	$9,000,000
1979 budget estimate	24,000,000
House allowance	24,000,000
Committee recommendation	24,000,000

This grant program is authorized under section 504 of title V of the Housing Act of 1949, as amended. The rural housing repair grant program is carried out by making grants to very low-income families to make necessary repairs to their homes in order to make such dwellings safe and sanitary, and remove hazards to the health of the occupants, their families, or the community. Such grants may be made to cover the cost of improvements or additions, such as repairing roofs, providing toilet facilities, providing a convenient and sanitary water supply, supplying screens, repairing or providing structural supports, or making similar repairs, additions, or improvements including all preliminary and installation costs in obtaining central water and sewer service. A grant can be made in combination with a section 504 very low-income housing repair loan.

For very low-income housing repair grants for fiscal year 1979, the Committee recommends an appropriation of $24,000,000. This is $15,000,000 more than was appropriated for fiscal year 1978, and is the same amount requested in the budget and provided in the House bill.

GRANTS FOR RURAL HOUSING FOR DOMESTIC FARM LABOR

1978 appropriation	$7,500,000
1979 budget estimate	38,000,000
House allowance	38,000,000
Committee recommendation	38,000,000

Financial assistance in the form of grants is authorized to public or private nonprofit organizations, or other eligible organizations for low-rent housing and related facilities for domestic farm labor, as authorized by section 516 of the Housing Act of 1949.

Assistance not to exceed 90 percent of the total development cost is authorized for new structures—including basic household furnishings—and sites, and for rehabilitation, alteration, conversion or improvement of dwellings, dining halls, community rooms or buildings and infirmaries used by domestic farm laborers.

For grants for rural housing for domestic farm labor for fiscal year 1979, the Committee recommends an appropriation of $38,000,000. This is $30,500,000 more than was appropriated for fiscal year 1978, and is the same amount requested in the budget, and provided in the House bill.

MUTUAL AND SELF-HELP HOUSING GRANTS

1978 appropriation	$9,000,000
1979 budget estimate	16,500,000
House allowance	16,500,000
Committee recommendation	16,500,000

This grant program was authorized by Public Law 90–448, approved August 1, 1968. Grants are made to local organizations to promote the development of mutual or self-help housing programs under which groups of usually 6 to 10 families build their own homes by mutually exchanging labor. Funds may be used to pay the cost of construction supervisors who will work with families to guide them in the construction of their homes and for administrative expenses of the organizations providing the self-help assistance.

For mutual and self-help housing grants for fiscal year 1979, the Committee recommends an appropriation of $16,500,000, the same as the budget request and as provided in the House bill. This is $7,500,000 more than was provided in 1978.

RURAL COMMUNITY FIRE PROTECTION GRANTS

1978 appropriation	$3,500,000
1979 budget estimate	
House allowance	3,500,000
Committee recommendation	3,500,000

This assistance was authorized by section 404 of the Rural Development Act of 1972, as amended. Grants are authorized to public bodies for up to 50 percent of the cost of organizing, training, and equipping rural volunteer fire departments.

For Rural Community Fire Protection grants for fiscal year 1979, the Committee recommends an appropriation of $3,500,000, the same as the amount appropriated for fiscal year 1978, and provided in the House bill. The budget did not include a request for these grants.

RURAL DEVELOPMENT PLANNING GRANTS (SEC. 111)

1978 appropriation	$5,000,000
1979 budget estimate	
House allowance	5,000,000
Committee recommendation	5,000,000

The Consolidated Farm and Rural Development Act, as amended (sec. 306(a)(11)), authorizes up to $10 million annually for rural development planning grants to be made to public bodies or such other agencies as the Secretary of Agriculture may select to prepare comprehensive plans for rural development or such aspects of rural development as he may specify.

These planning grants differ from the Rural Development grants funded in the bill at $10 million. The Rural Development grants are construction grants authorized under section 310(B)(c) of the Consolidated Farm and Rural Development Act that are made to public bodies to facilitate development of private enterprises, including the development, construction or acquisition of land, buildings, plan and equipment, access streets and roads, et cetera.

The Committee recommends the appropriation of $5,000,000 for these planning grants, the same as the House allowance. No funds were requested for these grants in the budget estimate.

RURAL HOUSING SUPERVISORY ASSISTANCE GRANTS

1978 appropriation	
1979 budget estimate	
House allowance	$2,500,000
Committee recommendation	2,500,000

This program is authorized under section 525(a) of the Housing Act of 1949, as amended, and provides for grants to public bodies and nonprofit entities to assist low-income individuals in benefitting from Federal, State, and local housing programs in rural areas. This authority has never been implemented.

For rural housing and supervisory assistance grants, the Committee recommends $2,500,000, the same as the House allowance. No funds were provided for the program in 1978 or requested in the 1979 budget.

RURAL DEVELOPMENT GRANTS

1978 appropriation	$10,000,000
1979 budget estimate	10,000,000
House allowance	10,000,000
Committee recommendation	10,000,000

Section 310B(c) of the Consolidated Farm and Rural Development Act, as amended, authorizes grants to be made to public bodies for measures designed to facilitate development of private enterprises, including the development, construction or acquisition of land, buildings, plants, equipment, access streets and roads, parking areas, utility extensions, necessary water supply and waste disposal facilities, refinancing, services and fees. These grants may be made in connection with business and industrial loans made under the Rural Development Insurance Fund.

For rural development grants for fiscal year 1979, the Committee recommends an appropriation of $10,000,000. This is the same as the amount appropriated for fiscal year 1978, requested in the budget, and provided in the House bill.

SELF-HELP HOUSING SITE DEVELOPMENT FUND CAPITALIZATION

1978 appropriation	
1979 budget estimate	
House allowance	
Committee recommendation	$1,000,000

Section 523 of the Housing Act of 1949, as amended, provides for the establishment of a Self-Help Housing Land Development Fund to be used by the Secretary as a revolving fund for making loans for the acquisition and development of land as building sites to be subdivided and sold to families, nonprofit organizations or cooperatives. A total of $3 million has been authorized to be appropriated for the fund, although only $2 million has been appropriated to date.

The Committee recommends the appropriation of $1 million for increased capitalization of the Self-Help Housing Land Development Fund. No funds were requested for this purpose in the budget estimate, and none were provided in the House bill.

SALARIES AND EXPENSES

	Appropriation	*Transfers*	*Total*
1978 appropriation	$185,184,000	($3,500,000)	($188,684,000)
1979 budget estimate	209,891,000	(3,500,000)	(213,391,000)
House allowance	219,566,000	(3,500,000)	(223,066,000)
Committee recommendation	230,582,000	(3,500,000)	(234,082,000)

Funds appropriated to this account are used to administer the various loan and grant programs of the Farmers Home Administration, with the exception of Emergency, Watershed, Flood Prevention, and Resources Conservation and Development loans. Administration of the programs includes the reviewing of applications, making and collecting loans, and extending technical assistance to borrowers.

In addition, other funds are made available from the Agricultural Credit Insurance Fund to service the unpredictable needs of the Emergency Program. An annual allotment is received from the Soil Conservation Service to cover the costs of administering watershed, flood, and resource conservation and development loans.

For salaries and expenses for fiscal year 1979, the Committee recommends an appropriation of $230,582,000, plus transfers from loan accounts in the amount of $3,500,000, for a total availability of $234,082,000. This is $45,398,000 more than was provided for fiscal year 1978, $20,691,000 more than the budget request and $11,016,000 more than the amount provided in the House bill.

The Committee does not concur in the House reduction of $150,000 below the budget estimate for the development and operation of the Unified Management Information System (UMIS). The funds have been restored to the bill to enable development of this needed system to proceed as planned.

The House recommended an increase of $7 million over the budget to fund an additional 594 new positions for the Farmers Home Administration. The Committee believes that approximately double that number of new personnel will be needed to meet Farmers Home Administration workload increases. Accordingly, the

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Committee has provided a total increase of $20 million above the budget which is $13,000,000 more than the House increase.

For review and monitoring services as well as evaluation of rural loan and grant effectiveness, the House added $3 million above the budget request. The Committee believes that only $1 million of this increased amount is needed for such evaluations and has deleted $2 million from the bill. These funds may be used for a variety of in-house or extramural research and evaluation efforts on programs of the Farmers Home Administration.

The Committee concurs in the House reduction of $175,000 for transfer of nonreimbursable personnel previously detailed to the Office of the Secretary.

The Committee has made two additional reductions below the budget request. The first is reduction of $25,000 for congressional liaison which was discussed earlier, and the other is a reduction of $109,000 for the Federal Assistance Programs Retrieval System. Although funding responsibility for this system has been transferred to the Office of Management and Budget, a corresponding reduction was not made in the Farmers Home budget estimate.

Rural Electrification Administration

The Rural Electrification Administration (REA), created in 1935, makes loans to finance electric and telephone service in rural areas. REA loans are made at 5 percent interest from the U.S. Treasury's Rural Electrification and Telephone Revolving Fund. A limited number of loans are made at 2 percent interest under special conditions. REA borrowers also obtain funds from non-REA sources under 100 percent guarantees by REA in behalf of the Federal Government. The agency participates in supplemental lending programs with its borrowers, whereby non-REA sources provide a substantial portion of the borrowers' capital needs.

REA does not own or operate rural electric or telephone facilities. Its function is to lend money and to assure its repayment and to provide management and technical assistance to achieve program objectives.

RURAL ELECTRIFICATION AND TELEPHONE REVOLVING FUND

ELECTRIC LOANS

1978 loan authorization	($750,000,000)
1979 budget estimate	(735,000,000)
House allowance	(850,000,000)
Committee recommendation	(850,000,000)

TELEPHONE LOANS

1978 loan authorization	($250,000,000)
1979 budget estimate	(250,000,000)
House allowance	(250,000,000)
Committee recommendation	(250,000,000)

CAPITALIZATION OF RURAL TELEPHONE BANK

1978 authorization	($30,000,000)
1979 budget estimate	(30,000,000)
House allowance	(30,000,000)
Committee recommendation	(30,000,000)

SALARIES AND EXPENSES

1978 appropriation	$22,567,000
1979 budget estimate	24,833,000
House allowance	24,905,000
Committee recommendation	24,658,000

For the salaries and expenses necessary to carry out the functions of the Rural Electrification Administration for fiscal year 1979, the Committee recommends an appropriation of $24,658,000. This is $2,091,000 more than was appropriated for fiscal year 1978, $175,000 less than the budget request and $247,000 less than the amount provided in the House bill.

The Committee does not concur with the House increase of $72,000 over the budget for six additional engineers for the telephone program. Funding provided within the budget request should be adequate for this program.

The Committee has deleted $25,000 for congressional liaison services of the agency, as explained earlier in the report. The Committee recommends a reduction of $150,000 from the budgeted increase of $422,000 for contractual services. The agency was unable to justify this portion of the increase.

CONSERVATION

SOIL CONSERVATION SERVICE

The Soil Conservation Service (SCS) was established under authority of the Soil Conservation Act of 1935 (49 Stat. 163; 16 U.S.C. 590a-f). It has responsibility for developing and carrying out a national soil and water conservation program in cooperation with landowners and operators and other land users and developers, with community planning agencies and regional resource groups, and with other agencies of government—Federal, State, and local. The SCS also assists in agricultural pollution control, environmental improvement, and rural community development.

The soil and water conservation program is carried on through financial and technical help to locally organized and operated conservation districts; local sponsors of watershed protection projects and resource conservation and development projects; and consultative assistance to other individuals and groups. Approximately 3,000 conservation districts cover almost 2 billion acres in all the States, Puerto Rico, and the Virgin Islands.

CONSERVATION OPERATIONS

1978 appropriation	$229,060,000
1979 budget estimate	258,659,000
House allowance	262,491,000
Committee recommendation	255,296,000

SCS provides technical assistance through conservation districts to landowners and operators in carrying out locally adapted soil and water conservation programs. This includes technical assistance in the development of conservation plans and application of conservation treatment, the making of soil surveys and the operation of Plant Material Centers. The Service is responsible for inventorying and monitoring to provide soil, water, and related resource data and resource use trends essential for programing and planning at all governmental levels.

AGRICULTURAL LAND CONVERSION

The conversion of agricultural land into housing subdivisions, industrial sites, water reservoirs, highways, and other uses that preempt agriculture has become the subject of increasing debate at all levels of government. According to SCS, 24 million acres of farmland were converted to nonagricultural uses during the 8-year period of 1967 to 1975, an average loss of 3 million acres per year.

The loss of agricultural land has been especially severe near urban areas. This conversion has caused an increased dependence on energy-intensive mechanized farming, with its expensive use of irrigated lands, fertilizers, and the high cost associated with long-haul transportation.

Therefore, the Committee finds that a major problem affecting the availability and quality of this Nation's soil resources is the conversion of farmland to nonagricultural uses.

The Resources Conservation Act of 1977 (Public Law 95–192) establishes a mechanism for making long-range policy to encourage the wise and orderly development of the Nation's soil and water resources. The act requires the Secretary of Agriculture to prepare an appraisal of the Nation's land, water, and related resources; to develop a national land and water conservation program; and, to submit a report to Congress on the appraisal program—together with a detailed statement of policy intended to be used for framing budget requests for Soil Conservation Service activities.

The Committee directs the Secretary of Agriculture, as provided under the general authority of Public Law 95–192, to make a pilot study of the transition of land from the production of food and fiber to urban development. This assessment and analysis should include the agricultural production, economic, environmental, and social impacts that result from the transition from the production of food and fiber to urban development. Areas to be considered for this study should be areas undergoing rapid transition from farmland to nonagricultural uses of soil such as King County in Washington, Suffolk County in New York, Howard County in Maryland, Burlington County in New Jersey and Stanislaus County in California.

COMMITTEE RECOMMENDATION

For conservation operations in fiscal year 1979, the Committee recommends an appropriation of $255,296,000. This is $3,363,000 less than the budget estimate, $26,236,000 above the 1978 level, and $7,195,000 less than is provided in the House bill.

The Committee recommends deletion of $4 million added by the House above the budget request for technical assistance in conjunction with section 35 of the Rural Clean Water Act. Funds for this purpose have been provided in a separate appropriation account, "Nonpoint Source Pollution Control—Grant Agreements and Technical Assistance."

The Committee has also deleted a House increase of $170,000 above the budget for technical assistance in connection with the Grand Valley salinity control project in Colorado. The Committee does not believe that this project is in a stage appropriate for funding at this time.

A reduction of $25,000 for congressional liaison activities is recommended by the Committee as discussed earlier in the report.

The Committee concurs in a reduction of $338,000 below the budget made by the House for transfer of nonreimbursable details to the Office of the Secretary.

Finally, the Committee recommends a reduction of $3 million below the budget request. This is a nonprogrammatic reduction based on a likely carryover balance from 1978. Such carryover balances have averaged approximately $6 million a year over the past 5 years.

RIVER BASIN SURVEYS AND INVESTIGATIONS

1978 appropriation	$15,506,000
1979 budget estimate	16,487,000
House allowance	16,487,000
Committee recommendation	16,487,000

The Soil Conservation Service administers a program which involves cooperation with other Federal, State, and local agencies in order to aid in the development of coordinated water resource programs. The Service has general responsibility for administration of activities consisting of investigations and surveys of proposed small watershed projects in response to requests made by sponsoring local organizations, and assisting sponsors in the development of watershed work plans.

For River Basin Surveys and Investigations for fiscal year 1979, the Committee recommends an appropriation of $16,487,000. This is $981,000 more than was appropriated for fiscal year 1978, and is the same as the House bill and budget estimate.

WATERSHED PLANNING

1978 appropriation	$11,847,000
1979 budget estimate	5,759,000
House allowance	12,587,000
Committee recommendation	5,759,000

The Department cooperates with the States and other agencies in planning works of improvement in small watersheds to reduce damage from floodwater, sediment, and erosion and for the conservation, development, utilization, and disposal of water, as authorized by Public Law 83-566.

The Department makes surveys of proposed small watershed projects, and work plans are prepared in cooperation with local

sponsors. These plans outline the soil and water management problems in the watershed, the steps that have been or are authorized to be taken to alleviate these problems, the proposed works of improvement to be installed, the estimated benefits and costs, cost sharing and operation and maintenance arrangements, and other facts necessary to justify Federal participation in project development.

For Watershed Planning for fiscal year 1979, the Committee recommends an appropriation of $5,759,000, the same as the budget estimate. This is $6,088,000 less than was appropriated for fiscal year 1978, and $6,828,000 less than the amount provided in the House bill.

The Committee recommends deletion of the increase of $6,828,000 provided by the House for 25 new watershed planning starts. This would restore the budget level for this activity. By not starting new watershed planning work in fiscal year 1979, greater progress can be made on the backlog of 180 projects and $738 million in construction for which planning is already complete.

WATERSHED AND FLOOD PREVENTION OPERATIONS

1978 appropriation	$186,492,000
1979 budget estimate	227,522,000
House allowance	169,607,000
Committee recommendation	227,522,000

The Soil Conservation Service has general responsibility for administration of activities which include cooperation with local sponsors, State, and other public agencies in the installation of planned works of improvement to reduce erosion, floodwater, and sediment damage; conserve, develop, utilize, and dispose of water; plan and install works of improvement for flood prevention including the development of recreational facilities and the improvement of fish and wildlife habitat; and loans to local organizations to help finance the local share of the cost of carrying out planned watershed and flood prevention works of improvement as authorized by Public Law 566, Public Law 534, and section 216 of the Flood Control Act of 1950. The Farmers Home Administration administers the loan program.

The Committee concurs in the budget request for funding of 25 new small watersheds under Public Law 566, to be fully funded at $75 million. This is $62,783,000 more than provided by the House, which recommended incremental funding. The Committee believes full funding is the preferable way to pay for these watershed projects.

The Committee has deleted $4,868,000 added by the House above the budget for new starts in the Public Law 534 program. Also provided is $10,000,000 for section 216. This is the same amount as the budget estimate and the amount included in the House bill.

For Watershed and Flood Prevention Operations for fiscal year 1979, the Committee recommends an appropriation of $227,522,000. This is $41,030,000 more than was appropriated for fiscal year 1978, the same as the budget request and $57,915,000 more than the amount provided in the House bill.

RESOURCE CONSERVATION AND DEVELOPMENT

1978 appropriation	$31,033,000
1979 budget estimate	6,797,000
House allowance	31,979,000
Committee recommendation	16,797,000

The Soil Conservation Service has general responsibility for assisting local sponsoring groups accelerate planning and development of land and water resources in multiple county areas. Projects may include such measures as flood prevention; developing water resources for recreation, wildlife, agricultural, municipal, or industrial use; conservation planning and establishment on individual land units; improving recreation facilities, including historical and scenic attractions; encouraging new industries to locate in the area and to process products of the area; improving markets for crop and livestock products; upgrading and protecting the quality of the environment; and long-range planning to coordinate public efforts in the area.

Activities include investigations and surveys to help develop programs and plans of land conservation and utilization, technical services and financial assistance to sponsors, local groups, and individuals, and making loans for resource improvements and developments in approved projects. The Farmers Home Administration administers the loan program.

The Committee does not concur in the House recommendation for 10 new area authorizations and an increase of $25,182,000 above the budget request. Additional assistance of $10 million above that requested in the budget is provided in the bill. The Resource Conservation and Development program has accomplished little that is of national priority. Furthermore, there is very little evidence, and indeed some specific departmental evaluations which cast doubt on the ability of the program to achieve significant conservation objectives as compared to areas without a similar program.

The Committee notes that the Department is currently performing an integrated evaluation of all departmental soil and water conservation programs under the direction of the Senate Committee on Agriculture, Nutrition and Forestry. This evaluation should assist in making a determination of the appropriate future direction for the Resource Conservation and Development program. Accordingly, the Committee recommends an amount sufficient to maintain the ongoing operations of existing areas, and has deleted the balance of the House increase.

For Resource Conservation and Development for fiscal year 1979, the Committee recommends an appropriation of $16,797,000. This is $14,236,000 less than was appropriated for fiscal year 1978, $10 million more than the budget request and $15,182,000 less than the amount provided in the House bill.

GREAT PLAINS CONSERVATION PROGRAM

1978 appropriation	$21,704,000
1979 budget estimate	8,023,000
House allowance	23,288,000
Committee recommendation	23,288,000

This program provides cost-sharing assistance and technical services to participating landowners or operators in the Great Plains area in the development and installation of long-term conservation plans and practices for their land. It is a voluntary program which complements other conservation programs of the Department in 469 designated counties of 10 Great Plains States. Contracts with individual landowners range in time from 3 to 10 years.

Program regulations provide that cost-share rates offered in any contract shall not exceed 80 percent of the cost of installing eligible practices within the designated county. The rates vary among States and practices due to differences in conservation and program needs. Cost-sharing for irrigation practices in any one contract shall not exceed $7,500. There is also a cost-sharing limitation of $25,000 for any contract.

For the Great Plains conservation program for fiscal year 1979, the Committee recommends an appropriation of $23,288,000, the same amount provided in the House bill and $15,265,000 above the budget estimate. This is $1,584,000 more than was appropriated in fiscal year 1978.

The Committee does not concur in the proposal in the budget to combine this program with the Agricultural Conservation Program.

Nonpoint Source Pollution Control

GRANT AGREEMENTS AND TECHNICAL ASSISTANCE

1978 appropriation	
1979 budget estimate	
House allowance	(1)
Committee recommendation	$75,000,000

[1] House bill provided $4 million under the "Conservation Operations" appropriation.

Public Law 95-217, the Clean Water Act of 1977, included section 35 entitled "Agricultural Cost Sharing." This section amended section 208 of the Federal Water Pollution Control Act (Public Law 92-500) by adding a new section (j).

Section 208(j) authorizes the Secretary of Agriculture, with the concurrence of the Administrator of the Environmental Protection Agency, to establish and administer a program to enter into contracts of 5 to 10 years with rural landowners and operators for the purpose of installing and maintaining measures incorporating best management practices to control nonpoint source pollution control for improved water quality. This program may be initiated in those States or areas for which the Administrator of EPA has approved the agricultural portion of a section 208 water quality management plan.

Since agricultural nonpoint source pollution will be reduced on a project area basis, a substantial portion of the funds for cost sharing will be provided through grant agreements entered into between the Administrator of the Soil Conservation Service and soil conservation districts, State soil and water conservation agencies, or State water quality agencies, who will, in turn, administer all or part of the program for a project area. In other cases, the Department of Agriculture will administer the program for a project area, and the Administrator, Agricultural Stabilization and Conservation Service,

will make cost-share payments to individuals through the ASC County committees. Accordingly, elsewhere in the bill, separate funds are provided for ASCS cost-share payments.

The Committee notes that the working agreement between USDA and the EPA states that administrative costs for the program should receive only a small percentage of the funds available. The Committee will closely monitor the program operation to assure that this is the case as the program is implemented. The Committee agrees with what is stated in this agreement that the primary objective of the program is the implementation of best management practices, not to provide for increased administrative personnel.

For "Nonpoint Source Pollution Control, Grant Agreements and Technical Assistance," the Committee recommends the appropriation of $75 million. This is $75 million more than the budget request or the House allowance, and is the first year of funding of this program.

Agricultural Stabilization and Conservation Service

AGRICULTURAL CONSERVATION PROGRAM

1978 appropriation	[1] $226,600,000
1979 budget estimate	100,000,000
House allowance	190,000,000
Committee recommendation	85,000,000

[1] Includes $36.6 million provided in the First Supplemental Appropriations Act.

The primary objectives of the agricultural conservation program (ACP) are: (1) to encourage farmers and ranchers to carry out long-term conservation measures that emphasize enduring conservation benefits, (2) to achieve desirable land-use adjustments, and (3) to provide community benefits and the general improvement of the total environment through a combination of economically sound public and private investments.

The authorizing legislation allows cost sharing with farmers and ranchers on both an annual and long-term basis. The program emphasis has been on meeting some of the more pressing farm related conservation and environmental problems in rural areas, on practices for long-range protection of the environment, and on practices that provide substantial benefits to the public at the least possible cost.

The program is administered in each county by the ASCS county committee, with review and approval by State ASCS committees and in consultation with other agencies. The committees select the approved cost-sharing practices best suited to meet the needs of their area.

The budget proposed to consolidate the Great Plains conservation program, the agricultural conservation program, and the nonpoint source pollution control program into a single entity in 1979. The Committee does not concur with that proposal.

However, the Committee does concur with the need to reform the Agricultural Conservation Program in order to place greater emphasis on long term, enduring practices and agreements. This was the clear intent of the 1977 farm bill (Public Law 95–113, section 1501), which stressed the need for a national program with emphasis

on enduring conservation and environmental enhancement measures. Accordingly, appropriate language changes have been made to the bill, including the deletion of the maximum individual payment ceiling, and the specification of use of conservation practices of 1970.

For the Agricultural Conservation Program, the Committee recommends an appropriation of $85,000,000. This is $15 million less than was requested in the budget and $105 million less than provided in the House bill. The $85 million represents that portion of the program that, in the past, has been used for enduring practices.

LIQUIDATION OF CONTRACT AUTHORITY

1978 appropriation	[1] ($201,600,000)
1979 budget estimate	(115,000,000)
House allowance	(115,000,000)
Committee recommendation	(115,000,000)

[1] Includes $36,600,000 provided in the First Supplemental Appropriations Act for liquidation of contract authority for drought and flood emergency work provided in Public Law 95-26.

For liquidation of contract authority for fiscal year 1979, the Committee recommends an appropriation of $115,000,000. This is $86,600,000 less than was appropriated for fiscal year 1978, and the same amount requested in the budget and provided in the House bill.

NONPOINT SOURCE POLLUTION CONTROL

COST SHARING

1978 appropriation	
1979 budget estimate	
House allowance	[1] 25,000,000
Committee recommendation	[2] 25,000,000

[1] Provides one quarter year of funding.
[2] Provides full year of funding.

As discussed earlier under the heading "Nonpoint Source Pollution Control, Grant Agreements and Technical Assistance," section 35 of the Clean Water Act, which amended section 208 of the Federal Water Pollution Control Act, authorized an agricultural cost-sharing program to control nonpoint source pollution for improved water quality in States having an approved section 208 agriculture plan.

The House bill provided $25 million for the first quarter year of funding of such a program. The Committee recommends provision of a total of $100 million for a full year of funding. At the present time, the estimates of resources required indicate a conclusive need for only $100 million. The Committee recommends that this $100 million be divided, with $75 million going for grant agreements and technical assistance through the Soil Conservation Service, and $25 million through the Agricultural Stabilization and Conservation Service for direct cost-share payments. The Secretary of Agriculture is authorized to transfer up to 50 percent of each of these two appropriations to the other, should the current estimate of the 3 to 1 ratio of grant agreements/technical assistance and cost-share payments be incorrect.

For nonpoint source pollution control, cost sharing, the Committee recommends an appropriation of $25,000,000. This is the same as the House allowance, but funds a full year versus one-quarter year. It is $25 million above the amount provided in 1978, and a similar amount more than the budget estimate.

FORESTRY INCENTIVES PROGRAM

1978 appropriation	$15,000,000
1979 budget estimate	10,000,000
House allowance	15,000,000
Committee recommendation	17,500,000

This program is authorized by section 4 of the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2103). The primary objective of cost-sharing for timber production is to increase the supply of sawtimber on nonindustrial private land.

For the forestry incentives program for fiscal year 1979, the Committee recommends an appropriation of $17,500,000. This is $2,500,000 more than the amount included in the House bill and appropriated for fiscal year 1978. It is $7,500,000 more than the budget request.

WATER BANK ACT PROGRAM

1978 appropriation	$10,000,000
1979 budget estimate	10,000,000
House allowance	10,000,000
Committee recommendation	10,000,000

The program is authorized by the Water Bank Act, approved December 19,1970, to preserve the wetlands of the Nation.

The Secretary of Agriculture enters into agreements with landowners and operators for the conservation of specified wetlands, and carries out the program in harmony with wetlands programs administered by the Secretary of the Interior, utilizing the technical and related services of appropriate State, Federal, and private conservation agencies to assure proper coordination.

For the Water Bank Act program for fiscal year 1979, the Committee recommends an appropriation of $10,000,000, the same as the amount appropriated for fiscal year 1978, requested in the budget, and provided in the House bill.

EMERGENCY CONSERVATION MEASURES

1978 appropriation	$10,000,000
1979 budget estimate	10,000,000
House allowance	10,000,000
Committee recommendation	10,000,000

This appropriation provides special funds for sharing the cost of emergency measures to deal with cases of severe damage to farm and rangelands resulting from natural disasters. The criteria under which assistance may be made available are set forth in the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590(h)).

The Committee recommends an appropriation of $10 million, the same as provided in the House bill, the 1978 appropriation and the 1979 budget request.

TITLE III—DOMESTIC FOOD PROGRAMS

Food and Nutrition Service

CHILD NUTRITION PROGRAMS

	Appropriation	Transfer from Section 32	Total
1978 appropriation	$1,488,344,000	(1,014,557,000)	(2,502,901,000)
1979 budget estimate	1,281,535,000	(1,411,575,000)	(2,693,110,000)
House allowance	1,364,535,000	(1,336,575,000)	(2,701,110,000)
Committee recommendation	1,281,535,000	(1,411,575,000)	(2,693,110,000)

The child nutrition appropriation of the Food and Nutrition Service funds the activities authorized by the National School Lunch Act, as amended, and the Child Nutrition Act of 1966, as amended. The Food and Nutrition Service administers the following programs:

1. Cash payments to States.—The programs are operated under an agreement entered into by the State agencies and the Department. Funds are advanced quarterly under letters of credit to State agencies for use in reimbursing participating schools and child care institutions. Sponsors make application to the State agencies, and if accepted, are reimbursed on a per-meal basis in accordance with the terms of their agreement and rates prescribed by law.

(a) School lunch program.—Assistance is provided to the States for service of lunches to all school children, regardless of family income. States must match some of the Federal cash grant from sources within the State. In fiscal year 1977, children's payments, State appropriated funds and other local contributions paid for 52 percent of the cost of the lunch program.

(b) Special assistance.—Additional assistance is provided to the States for serving lunches free or at a reduced price to needy children. In 1977, the program served a total of 1.9 billion lunches to an average of 11.7 million participating children. Reduced price lunches made up 11 percent of the total.

(c) School breakfast program.—Federal reimbursement to the States is based on the number of breakfasts served free, at a reduced price, or to paying children. Certain schools, designated as especially needy, receive higher rates of reimbursement. In 1977, the program served a total of 421 million breakfasts to 2.5 million participating children.

(d) Equipment assistance program.—The States are provided with grants-in-aid for schools in low-income areas. The funds, apportioned by formula, are for the purchase of food service equipment other than land or buildings. One-third of the amount is reserved for use in schools which are without food service or without the facilities to prepare, cook or receive hot meals. In 1977, $28 million was obligated for schools enrolling 5 million children.

(e) State administrative expenses.—Public Law 95-166 made the amount of the grant for State administrative expenses a percentage of Federal payments in the second previous year. The funds may be used for State employee salaries, benefits, support services and office equipment.

(f) Summer food program.—Meals served free to children in poor areas during the summer months are supported on a performance basis by Federal advances to State agencies. Local administrative expenses are reimbursed at negotiated rates, and State administrative expenses are supported with a grant of percentage of funds distributed to the State in the preceding fiscal year. In 1977, 2.7 million children participated in the program.

(g) Child care food program.—Preschool children receive year-round food assistance in child care centers under this program. Food service in family day care homes and Headstart centers is subsidized. The program reimburses State agencies for breakfasts, lunches, suppers, and meal supplements served at regular, reduced and free prices. In 1977, 301 million meals were served to an average 546 thousand children daily.

2. Commodity procurement.—The program provides commodities to schools for the lunch and breakfast programs, and to institutions in the child care and summer feeding programs. Commodities are also acquired under programs that strengthen markets, income and supply. (Section 32 funds)

3. Nutrition studies and education:

(a) Nutritional training and surveys.—Up to 1 percent of the total program funds available may be used for nutritional training and for studies and surveys of the child nutrition programs, under section 6(a)(3) of the National School Lunch Act.

(b) Nutrition education projects.—In fiscal year 1978, $1 million was appropriated for demonstration projects in nutrition education, under section 18 of the Child Nutrition Act of 1966.

(c) Nutrition education grants.—Public Law 95-166 instituted a per capita grant to the States for nutrition education based on the number of children enrolled in schools and child care institutions in the State times 50 cents.

The following table summarizes amounts recommended by the Committee for the domestic food programs, and compares them with the House bill.

FOOD AND NUTRITION SERVICE, FOOD ASSISTANCE BY PROGRAM AND APPROPRIATION ACCOUNT

[In thousands of dollars]

	1978 Estimate	1979 Budget estimate (budget authority)	1979 House allowance (budget authority)	1979 Committee recommendation (budget authority)
A. Child nutrition programs:				
1. Program grants to States:				
(a) School lunch program	615,000	635,000	635,000	635,000
(b) Free and reduced price lunches	1,067,111	1,146,810	1,146,810	1,146,810
(c) School breakfast program	201,000	215,000	215,000	215,000

FOOD AND NUTRITION SERVICE, FOOD ASSISTANCE BY PROGRAM AND APPROPRIATION ACCOUNT —Con.

(In thousands of dollars)

	1978 Estimate	1979 Budget estimate (budget authority)	1979 House allowance (budget authority)	1979 Committee recommendation (budget authority)
A. Child nutrition programs: —Con.				
1. Program grants to States: —Con.				
(d) Equipment assistance program	28,000	20,000	28,000	20,000
(e) State administrative expenses	13,675	25,000	25,000	25,000
(f) Summer food services program	140,000	148,500	148,500	148,500
(g) Child care food program	137,000	146,000	146,000	146,000
Total, program grants to States	2,201,786	2,336,310	2,344,310	2,336,310
2. Commodities to States:				
(a) FNS child nutrition	299,415	328,900	328,900	328,900
(b) FSQS, sec. 32	278,592	206,100	206,100	206,100
Total, commodities to States	578,007	535,000	535,000	535,000
3. Nutritional studies and education (FNS):				
(a) Training and surveys, sec. 6a3	700	700	700	700
(b) Nutrition education, sec. 18	1,000	1,000	1,000	1,000
(c) Nutrition education, sec. 19	.....	26,200	26,200	26,200
Total, nutrition studies and education	1,700	27,900	27,900	27,900
Total, child nutrition programs	2,781,493	2,899,210	2,907,210	2,899,210
B. Special milk program (FNS):				
1. Cash payments to States	155,000	142,000	142,000	142,000
C. Special supplemental food programs:				
1. Special supplemental food program (WIC)(FNS)	247,000	535,500	560,500	550,000
2. (a) Commodity supplemental food program (FNS)	17,600	19,500	19,500	19,500
Total, special supplemental food program	264,600	555,000	580,000	569,500
D. Food stamp program (FNS):				
1. Bonus costs	5,205,981	5,391,200	5,382,581	5,391,200
2. State administrative costs	330,000	315,600	315,600	315,600
3. Other program costs	82,400	72,400	72,400	72,400

FOOD AND NUTRITION SERVICE, FOOD ASSISTANCE BY PROGRAM AND APPROPRIATION ACCOUNT —Con.

[In thousands of dollars]

	1978 Estimate	1979 Budget estimate (budget authority)	1979 House allowance (budget authority)	1979 Committee recommendation (budget authority)
D. Food stamp program (FNS): — Con.				
4. Transfer to OIG	.....	.....	8,619	.....
Total, food stamp program	5,618,381	5,779,200	5,779,200	5,779,200
E. Food donations program:				
1. (a) Needy families (FNS)	12,500	11,500	11,500	11,500
2. Cash to distributing agencies (FNS)	1,300	1,300	1,300	1,300
Total, food donations program	13,800	12,800	12,800	12,800
F. Elderly feeding program	30,000	.....	.....	.....
G. Direct distribution to other outlets:				
1. CCC summer camps	3,500	4,500	4,500	4,500
2. CCC institutions	20,000	25,000	25,000	25,000
Total, direct distribution to other outlets	23,500	29,500	29,500	29,500
H. Food program administration (FNS):				
1. Child nutrition	14,733	17,039	17,039	17,039
2. Special milk	107	95	95	95
3. Special supplemental food	3,174	5,237	5,237	5,237
4. Food stamp	49,043	48,748	48,748	48,748
5. Food donations	345	238	238	238
6. Elderly feeding	866	866	.....	.....
7. Transfer of nonreimbursable details	.....	.....	—57	—57
8. Congressional liaison	.....	.....	.....	—25
9. Reimbursement to Social Security Administration	.....	.....	.....	3,000
Total, food program administration	68,268	72,223	71,300	74,275
Nutrition education (Extension Service)	50,560	50,560	53,060	50,560
Grand total, food assistance	9,005,602	9,540,493	9,575,070	9,557,045
Recapitulation:				
Current budget authority:				
FNS child nutrition	2,502,901	2,693,110	2,701,110	2,693,110
FNS special milk	155,000	142,000	142,000	142,000
FNS special supplemental food programs	264,600	555,000	580,000	569,500
FNS food stamp	5,618,381	5,779,200	5,779,200	5,779,200
FNS food donations	13,800	12,800	12,800	12,800
Elderly feeding	30,000			
FNS food program administration	68,268	72,223	71,300	74,275

FOOD AND NUTRITION SERVICE, FOOD ASSISTANCE BY PROGRAM AND APPROPRIATION ACCOUNT —Con.

[In thousands of dollars]

	1978 Estimate	1979 Budget estimate (budget authority)	1979 House allowance (budget authority)	1979 Committee recommendation (budget authority)
Recapitulation: —Con.				
Current budget authority: —Con.				
Extension Service	50,560	50,560	53,060	50,560
Total	8,703,510	9,304,893	9,339,470	9,321,445
Permanent budget authority:				
FSQS, sec. 32	278,592	206,100	206,100	206,100
Commodity Credit Corporation	23,500	29,500	29,500	29,500
FNS child nutrition, transferred from FSQS, sec 32	(1,014,557)	(1,411,575)	(1,336,575)	(1,411,575)
Total	302,092	235,600	235,600	235,600
Grand total	9,005,602	9,540,493	9,575,070	9,557,045

For the Child Nutrition Programs for fiscal year 1979, the Committee recommends an appropriation of $1,281,535,000 plus transfers from section 32 of $1,411,575,000, for a total program of $2,693,110,000. The appropriation is $206,809,000 less than was provided in 1978, the same as the budget estimate, and $83,000,000 less than is included in the House bill. Transfers from section 32 are $397,018,000 more than was provided in 1978, the same as the budget estimate, and $75,000,000 above the House level as discussed earlier in the report in connection with section 32. The total program is $190,209,000 more than was provided in 1978, the same as the budget estimate, and $8 million less than the House bill.

The Committee has recommended a reduction of $8 million from the House bill for the equipment assistance program, and provided the budget request of $20 million. This figure is sufficient in view of the substantial sums already granted the States for long-lived equipment over the past decade. Presently, 92 percent of schools are now participating in the lunch program.

The House report directed the Department not to regulate the use of formulated grain fruit products (commonly known as super donuts), which have been a part of the school breakfast program. Instead, the House directed that the question of use of such products be left to the determination of each school. The Committee considered this matter, and recommends that the regulation of foods for the school breakfast program remain at the discretion of the executive branch. It is considered inadvisable to attempt to involve the Congress in day-to-day regulations regarding administration of such programs, which are more properly vested with the Department.

The Committee continues to be concerned about the "potential" for abuse in the school lunch application process. The Committee is aware of a growing amount of criticism that some parents are intentionally misrepresenting their income figures on their school

lunch application form in order for their children to be eligible to receive a free or reduced price lunch. The Department has acknowledged to the Committee that they, too, are aware of this problem; however, the Department has advised the Committee that they are unable to determine the magnitude of this problem. Therefore, within 3 months after enactment of this legislation, the Department is directed to provide the Committee with the most accurate data available which documents the severity (or lack thereof) of this problem. If the data establishes that a problem does exist beyond what can be considered reasonably acceptable, the Department is to develop a plan of administrative action that will be used to correct this problem.

The Committee expects that $4 million of the funds appropriated for State administrative expenses for child nutrition programs will be allocated and used for activities, including audits, to identify and take any needed corrective action concerning administrative problems in the school feeding programs—such as noncompliance with meal standards or eligibility criteria and the submission of reimbursement claims which exceed actual meal costs.

SPECIAL MILK PROGRAM

1978 appropriation	$155,000,000
1979 budget estimate	142,000,000
House allowance	142,000,000
Committee recommendation	142,000,000

The special milk program was originally designed to encourage the consumption of fluid whole milk by children in nonprofit schools of high school grade and under, summer camps, and similar institutions. The authority for the program is section 3 of the Child Nutrition Act of 1966.

Funds are provided to State agencies to reimburse participating institutions for a part of the cost of fluid milk consumed. Reimbursement is made for the full cost of milk served free to needy children. Needy children may receive free milk under this program in addition to the free milk provided with their free lunch under the school lunch program. The eligibility standard for free milk is the same as that established for free lunches.

For the special milk program for fiscal year 1979, the Committee recommends an appropriation of $142,000,000, the same as the House bill and budget estimate. This is $13 million less than was provided in 1978.

SPECIAL SUPPLEMENTAL FOOD PROGRAMS (WIC)

1978 appropriation	$247,000,000
1979 budget estimate	555,000,000
House allowance	580,000,000
Committee recommendation	569,500,000

The special supplemental food program (women, infants and children—WIC) is authorized by section 17 of the Child Nutrition Act of 1966, as amended. The program makes funds available to local health clinics through State departments of health and to Indian tribes to provide supplemental food to low-income pregnant

and lactating women, infants and children up to 5 years of age. The participants must be judged to be at nutritional risk by medical or nutritional professionals due to low income and inadequate nutrition.

In addition, the budget proposed to closely integrate the commodity supplemental food program with the WIC program. The commodity supplemental food program provides for distribution of supplemental food items to low-income women, infants and children, and has much the same objectives as the WIC program.

For the special supplemental food programs (WIC) for fiscal year 1978, the Committee recommends an appropriation of $569,500,000, consisting of $550,000,000 for WIC and $19,500,000 for the commodity supplemental food program. The total provided is $14,500,000 above the budget estimate, $322,500,000 more than was appropriated for fiscal year 1978, and $10,500,000 less than the amount provided in the House bill.

The Committee does not concur with the House recommendation to provide $25,000,000 more than the budget request for the WIC program, although it has provided an increase of $14,500,000 above the budget. It does not appear that participation rates under the program will grow as rapidly as indicated by the level provided in the House bill. The Committee believes that a total level of $550,000,000 for the WIC portion of the programs will be adequate to meet the actual levels of participation.

FOOD STAMP PROGRAM

1978 appropriation	$5,627,000,000
1979 budget estimate	5,779,200,000
House allowance	5,779,200,000
Committee recommendation	5,779,200,000

The food stamp program helps to increase the food purchasing power of eligible households by enabling them to purchase food through regular retail stores with food stamp coupons. Participating households receive food stamps based on household sizes and incomes.

The Food Stamp Act of 1977 (Public Law 95–113) made significant changes in the program, the highlights of which are: Elimination of the food stamp purchase requirement; a coupon allotment equal to the cost of the thrifty food plan reduced by 30 percent of the household's income, with a minimum allotment of $10 for the one- and two-person household; replacement of itemized deductions with a standard deduction of $60 for each household; a deduction of 20 percent of earned income for working families to compensate for mandatory payroll deductions; a maximum deduction of $75 in the 48 States for excess shelter and child care costs; for Alaska, Hawaii, Puerto Rico, the Virgin Islands and Guam the maximum is based on prevailing shelter costs; elimination of automatic categorical eligibility for recipients of benefits from welfare programs; and requirement for tougher enforcement and administration of the program by States.

Food stamps are issued through State welfare agencies at the county level, which assume responsibility for the certification of

eligible households and for issuing the correct amount of food stamps through suitable issuance outlets. State administrative costs associated with the program are shared by the States and the Federal Government on a 50–50 basis. The food stamp program is in operation in all 50 States, Puerto Rico, the Virgin Islands, Guam, and the District of Columbia.

A number of economic factors have impacted on the estimated 1979 cost of the food stamp program, including both increased food prices and employment levels. However, at this time, these appear to be offsetting each other, so no change has been formally made in the estimates at this time.

For the food stamp program, the Committee recommends the appropriation of $5,779,200,000, the same amount included in the budget estimate. This is $152,200,000 above the 1978 appropriation, and is the same as the amount provided in the House bill.

The Committee commends the thoroughness with which the Department has reviewed and rewritten the rules governing the food stamp program, as required by the new Food Stamp Act of 1977. The proposed food stamp program regulations published on May 2, 1978, implementing the majority of the provisions in the new act, represent one of the most complete and openly arrived at overhauls of a major Federal program ever attempted. In particular, the Committee wishes to note and commend the Department for the numerous public hearings and public meetings it conducted in order to solicit views and suggestions from all concerned parties prior to publishing the proposed regulations.

As passed by the Congress, the Food Stamp Act of 1977 was intended to simplify administration, eliminate fraud and abuse, encourage participation among and open access to eligible households, and tighten eligibility standards. However, the Committee is concerned that two of these four goals—namely the elimination of fraud and abuse and simplification of administration—may not be achieved by the regulations proposed to implement this new act.

The Committee is almost certain that by eliminating the purchase requirement thousands of eligible households will become program participants for the first time. Moreover, eligibility standards will be tightened and more restrictive, as required by the new act. While these are worthy achievements, it is imperative that the administrative details in the proposed regulations assure that only the needy are able to take advantage of the program and that administrative costs and procedures be controlled.

For these reasons, the Committee is extremely concerned with the verification process outlined in the proposed regulations and the potential for large increases in administrative burdens and costs of the new regulations. State comments on the proposed regulations have estimated substantial increases associated with the new regulations in both error rates and administrative costs. This is exactly the opposite of the goal Congress intended to reach when it passed the Food Stamp Act of 1977.

Furthermore, the Committee is concerned that the new regulations will remove the administrative flexibility that many States feel necessary to run an efficient and effective program. This problem appears to stem from the departmental decision to remedy

some State excesses in administrative practices by mandating that all States follow very specific and detailed courses of action in implementing the reformed food stamp program.

The Committee is well aware that the regulations issued on May 2, 1978, are only proposed regulations and do not represent the final word on the administrative character of the new food stamp program. However, the Committee is hopeful that substantial changes will be made in the regulations prior to final issuance which speak to the issues raised here. The Committee would not be favorably impressed by an increase in the error rates at a substantially higher administrative cost, and accordingly, the Committee will carefully review the food stamp program during consideration of the fiscal year 1980 budget or any time the Committee receives a request from the Department for reprograming existing funds to pay increased administrative costs.

FOOD DONATIONS PROGRAM

1978 appropriation	$31,400,000
1979 budget estimate	12,800,000
House allowance	12,800,000
Committee recommendation	12,800,000

This program provides agricultural commodities to needy persons in lieu of food stamps, and finances the cost of distribution of such commodities through State distributing agencies.

For the food donations program, the Committee recommends an appropriation of $12,800,000. This is $18,600,000 less than the amount appropriated in 1978, and the same as the budget estimate and House allowance.

FOOD PROGRAM ADMINISTRATION

1978 appropriation	$64,951,000
1979 budget estimate	72,223,000
House allowance	71,300,000
Committee recommendation	74,275,000

The appropriation includes Federal operating expenses for the Food and Nutrition Service formerly financed under the child nutrition programs, special milk, special supplemental food program (WIC), food stamp program, and food donations program appropriations.

For Food Program Administration for fiscal year 1979, the Committee recommends an appropriation of $74,275,000. This is $9,324,000 more than the amount provided in fiscal year 1978, $2,052,000 above the budget request, and $2,975,000 more than the amount provided in the House bill.

The Committee concurs in reductions of $866,000 and $57,000 made by the House for administrative expenses of the elderly feeding program (transferred to the Department of Health, Education and Welfare) and for transfer of nonreimbursable personnel to the Office of the Secretary, respectively. In addition, the Committee recommends a reduction of $25,000 for congressional liaison that was discussed previously.

The Committee also recommends the inclusion of $3 million in the bill above the budget estimate and House allowance in order to reimburse the Social Security Administration for certification of food stamp recipients. The Food Stamp Act of 1977 (Public Law 95–113) contains a provision permitting recipients of social security benefits to apply for food stamps at Social Security offices and be certified for food stamp eligibility in those offices in order that the application and certification for food stamp assitance may be accomplished as efficiently and conveniently as possible. Social Security Administration cannot fund their food stamp activity because Public Law 95–113 limits overall spending authority for the food stamp program and makes the Secretary of Agriculture responsible for its administration.

In order to implement provisions of the new Act, the Committee is recommending that $3 million be provided in the Food Program Administration account for transfer to the Social Security Administration. This should be sufficient to pay for that portion of the cost of additional Social Security Administration personnel that is specifically related to food stamp applications.

TITLE IV—INTERNATIONAL PROGRAMS

Foreign Agricultural Service

1978 appropriation	$45,665,000
1979 budget estimate	51,663,000
House allowance	53,645,000
Committee recommendation	56,403,000

The appropriation of the Foreign Agricultural Service funds the activities authorized by the Agricultural Act of 1954 (Public Law 690) and the Agricultural Trade Development and Assistance Act of 1954, as amended. The activities carried out include coordination and direction of trade programs and agreements with a specific goal of expanding world trade of American agricultural products, agricultural attaches in 108 countries who execute Department programs and represent American agricultural interests, development of foreign markets in order to promote and assist in the expansion of commercial export sales of American farm products, and collection, analysis and distribution of worldwide intelligence on the supply, demand and trade of agricultural commodities and coordination and direction of departmental activities in intergovernmental and nongovernmental organizations.

The Committee believes that the functions of the Office of the General Sales Manager, which include promotion of export of U.S. agricultural commodities, Public Law 480, export of CCC-owned commodities, and monitoring of private U.S. export sales, can better be performed if the Sales Manager is merged into the Foreign Agricultural Service, and so recommends. The Committee notes the expansion of international-oriented agencies (Sales Manager, World Food Board, International Development Staff) and believes some consolidation is possible. Also, direct funding for the Sales Manager is recommended.

Accordingly, the Committee has added to the budget request and House bill $3,758,000 for the functions of the Sales Manager. This is the total amount in the budget request, with the exception of $444,000 requested for additional personnel for new export programs which the Committee has deleted. At the same time this increase was requested, the Foreign Agricultural Service proposed an increase of $4,422,000 for foreign market development. The Committee does not agree with large funding and personnel increases occurring in two separate agencies, when such increases could be somewhat moderated if the agencies were combined.

The Committee does not concur in the House increase of $2 million above the budget request for foreign market development, and has provided an increase of $1 million instead. Expansion of foreign market development activities, including additional trade

offices and the cooperator program, can proceed with the increase of $5,422,000 included in the bill, or almost 24 percent above the 1978 level.

The House proposed a reduction of $18,000 for transfer of non-reimbursable personnel to the Office of the Secretary. The Committee concurs in this reduction.

The Committee directs that the Department station an additional person, well qualified in all agricultural areas, in Tokyo, Japan, on a permanent basis, to assist in assuring that U.S. agricultural exports meet Japanese import requirements. To the extent possible, this individual should have a scientific background.

For the Foreign Agricultural Service for fiscal year 1979, the Committee recommends an appropriation of $56,403,000. This is $10,738,000 more than was appropriated for fiscal year 1978, $4,740,000 more than the budget request, and $2,758,000 more than the amount provided in the House bill.

International Development Staff

1978 appropriation	$199,000
1979 budget estimate	199,000
House allowance	199,000
Committee recommendation	199,000

The International Development Staff was established in September, 1977 and is responsible for coordinating, planning and directing the Department's programs in international development and technical cooperation in food and agriculture.

The staff utilizes resources of Department of Agriculture agencies, and maintains close relationships with the Agency for International Development, other Government agencies, land-grant universities, and international organizations. Activities include technical assistance to developing countries, the arrangement of training of international participants in the United States and overseas, and the implementation of the development aspects of food assistance programs. Services provided are financed largely by reimbursements of funds from AID, other institutions and contracting nations.

For the International Development Staff, the Committee recommends the full amount of the budget request, $199,000, which is the same as the House allowance. This is the first year funds were requested for this new staff.

Public Law 480

1978 appropriation	$922,885,000
1979 budget estimate	805,900,000
House allowance	805,900,000
Committee recommendation	805,900,000

Facilities and funds of the Commodity Credit Corporation are, by law, used in carrying out programs for exporting agricultural commodities. The laws also authorize appropriations to be made to cover cost of such programs. When funds become available, advances are made to the Corporation for estimated costs. If the amounts appropriated are greater than actual needs, the excess is used to reduce future appropriation requests. If the appropriations are less than

actual needs, other Corporation funds may be used temporarily to finance the blanace of the costs.

Because of these various funding authorities, actual program levels vary from the amounts provided in the appropriations bill, as are reflected in the following table:

PROGRAM OPERATING LEVELS AND APPROPRIATIONS

Project	1977	1978 (estimated)	Increase or decrease	1979 (estimated)
1. Financing the sale of agricultural commodities for convertible foreign currencies and for dollars on credit terms (title I and III)	$798,567,934	$844,140,328	—$3,865,928	$840,274,400
2. Commodities supplied in connection with dispositions abroad (title II)	459,541,377	542,307,412	+30,698,588	573,006,000
Total program level	1,258,109,311	1,386,447,740	+26,832,660	1,413,280,400
Adjustments to appropriations:				
Title I:				
Receipts from sale of foreign currencies and loan repayments used to finance the program	—407,879,297	—318,300,000	—26,300,000	—344,600,000
Unobligated balances (includes balances in the Corporation):				
Brought forward	—115,473,365	—405,249,728	+248,975,328	—156,274,400
Funds carried forward	405,249,728	156,274,400	—156,274,400	
Title II:				
Funds brought forward		—2,793,412	—103,712,588	—106,506,000
Funds carried forward	2,793,412	106,506,000	—106,506,000	
Costs brought forward	26,455,211			
Costs carried forward				
Total, appropriation	1,169,255,000	922,885,000	—116,985,000	805,900,000

The following activities are currently being carried out under the Agricultural Trade Development and Assistance Act of 1954, Public Law 480, 83d Congress, as amended:

1. Financing the sale of agricultural commodities for convertible foreign currencies and for dollars on credit terms (titles I and III)(7 U.S.C. 1701–1715, 1727–1727f).—Title I of the legislation authorizes sales for convertible foreign currencies and for dollars on credit terms, and for financing commodities exported under title III food for development programs. Sales for dollars or convertible foreign currencies may be made with foreign governments or United States and foreign private trade entities. Credit terms as favorable to the United States as the economy of the foreign country will permit but not less than for development loans made under section 201 of the Foreign Assistance Act of 1961, as amended, are allowed under the legislation.

2. Commodities supplied in connection with dispositions abroad (Title II) (7 U.S.C. 1721–1726).—Commodities are supplied without cost to friendly nations and friendly peoples in times of famine or other emergency relief needs, to combat malnutrition, and to promote economic and community development in underdeveloped countries. The Corporation pays ocean freight on shipments under this title, and may also pay overland transportation costs to a landlocked country. Each year, up to $7.5 million of foreign currencies accruing under title I may be purchased from this appropriation to meet costs of self-help activities (other than personnel and administrative) of cooperating groups.

For Public Law 480 programs for fiscal year 1979, the Committee recommends an appropriation of $805,900,000, the same as the budget request and the amount provided in the House bill.

CARRYOVER BALANCES—PUBLIC LAW 480

The Committee is concerned about the imprecision in the budget estimates of carryover balances in title I. As shown in the following table, there is a significant difference between the budget estimate of carryover, and the actual carryover that occurs. In most cases, the carryover is larger than estimated, which could form the basis of a nonprogrammatic reduction in the program.

COMPARISON OF TITLE I CARRYOVER BALANCES

FUNDS AVAILABLE AT START OF YEAR

[$ Millions]

	1974	1975	1976	1977	1978
Budget estimate	211	74	1	[1] —70	249
Actual carryover	302	287	239	115	405
Difference	91	213	238	185	156

[1] Indicates costs financed.

The Committee recommends that the Department take actions to improve the estimating process, and obtain a clearer picture of likely carryovers prior to the start of a fiscal year. The Department is to report to the Committee on efforts taken in this regard along with its 1980 budget presentation.

The Committee recommends deletion of a House proviso prohibiting use of Public Law 480 funds for assistance to Korea.

Representatives of the Senate Select Committee on Ethics have been engaged for nearly six months in direct and indirect discussions with representatives of the Government of the Republic of Korea concerning possible arrangements for meeting with Kim Dong Jo, a former Ambassador to the United States from Korea, who has been identified as a possible source of payments to Members of Congress. A cut-off of Public Law 480 funds to South Korea at this time will have no positive effect on efforts to obtain Korean cooperation in this matter. In fact, it could be counter-productive. Every threat of congressional reprisal to date has been followed by a stiffening of the Korean position. That which a nation might do voluntarily is made the more difficult under threat and when pride and sovereignty are on the line.

The Committee believes that it would be more productive to make a final gesture of cooperation to the Government of the Republic of Korea by approving Public Law 480 aid to Korea at this time.

TITLE V—RELATED AGENCIES

INDEPENDENT AGENCIES

Department of Health, Education and Welfare

Food and Drug Administration

The programs of the Food and Drug Administration (FDA) are designed to achieve consumer protection by insuring that foods are safe, pure, and wholesome; that human and animal drugs, biological products, and therapeutic devices are safe and effective; and radiological products and their operation do not result in unnecessary exposure to radiation.

To accomplish its mission, FDA sets food and product standards; evaluates the safety and efficacy of new drugs before they are marketed; conducts and sponsors research to detect health hazards and violations of consumer laws or regulations; informs business firms and consumers about FDA related topics; works with State and local agencies to develop programs that will supplement or complement those of FDA; maintains surveillance over foods, drugs, and electronic products to insure that they are safe, effective, and honestly labeled; and takes legal action where necessary to remove violative products from the marketplace and to prosecute firms or individuals that violate the law.

The programs in support of these objectives are encompassed within five budget activities: (1) foods, (2) drugs and devices, (3) radiological products, (4) National Center for Toxicological Research, and (5) program management.

A distribution of FDA's resources and positions as included in the budget estimate is delineated in the following table:

DISTRIBUTION OF FDA RESOURCES

Salaries and Expenses

	1978				1979			
	Positions	$000	Total Positions	Total $000	Positions	$000	Total Positions	Total $000
Foods:								
Food safety	2,313	81,625	31.0%	28.4%	2,313	81,735	30.5%	27.8%
Food economics	95	3,114	1.3%	1.1%	52	1,762	0.7%	0.6%
Cosmetics	81	2,979	1.1%	1.0%	45	1,691	0.6%	0.6%
Total foods	2,489	87,718	33.4%	30.5%	2,410	85,188	31.8%	29.0%
Drugs and devices:								
Human drugs	2,020	65,321	27.0%	22.8%	2,030	66,530	26.8%	22.6%
Veterinary drugs	445	17,158	6.0%	6.0%	450	17,492	6.0%	5.9%
Medical devices	834	25,883	11.2%	9.0%	993	31,003	13.1%	10.5%
Biologics	503	19,923	6.7%	7.0%	508	20,284	6.7%	6.9%
Total drugs and devices	3,802	128,285	50.9%	44.8%	3,981	135,309	52.6%	45.9%
Radiological products	473	20,262	6.3%	7.0%	473	20,489	6.3%	7.0%
National Center for Toxicological Research	225	13,866	3.0%	4.8%	225	13,974	3.0%	4.8%
Program management	474	37,120	6.4%	12.9%	474	39,344	6.3%	13.3%
Total, Food and Drug Administration	7,463	287,251	100.0%	100.0%	7,563	294,304	100.0%	100.0%

SALARIES AND EXPENSES

1978 appropriation	$276,243,000
1979 budget estimate	294,304,000
House allowance	289,854,000
Committee recommendation	295,454,000

For salaries and expenses for fiscal year 1979, the Committee recommends $295,454,000. This is $19,211,000 more than the amount appropriated in fiscal year 1978, $1,150,000 above the budget estimate and $5,600,000 more than the House allowance.

The Committee recommends concurrence in House increases of $300,000 and $250,000 above the budget for additional research in cosmetics and the use of antibiotics in animal feeds, respectively.

The House proposed a reduction of $5 million from the budget for funds which were unlikely to be needed for salaries under conditions in effect when they considered the bill. Subsequent to that time, the Food and Drug Administration has been issued revised personnel allotments which closely compare with the requirements shown in the budget. Accordingly, the Committee recommends restoring this $5 million to the bill to provide needed funds for salaries and expenses.

In addition, the Committee has recommended an increase of $600,000 above the budget for nutrition initiatives as discussed earlier in this report. This includes $250,000 for long-term ingestion of dietary supplements, drugs, et cetera, $250,000 for FDA total diet studies, and $100,000 for measurement of total body stores of minerals and other constituents.

With respect to the matter of consumer participation in agency regulatory activities, the House report recommended against payments of agency funds for such purposes. Subsequently, section 613 was added, which prohibits the payment of expenses of parties intervening in agency regulatory proceedings, and is applicable to all agencies funded in the bill. As discussed elsewhere in this report, the Committee recommends deletion of section 613. Notwithstanding the final outcome of this matter, the Committee believes that because of the similarity of many of the regulatory proceedings of USDA and FDA, a uniform approach should be taken in these matters.

BUILDINGS AND FACILITIES

1978 appropriation	$6,665,000
1979 budget estimate	11,984,000
House allowance	10,459,000
Committee recommendation	10,459,000

For buildings and facilities for fiscal year 1979, the Committee recommends an appropriation of $10,459,000. This is $3,794,000 more than provided in 1978, and the same as the House allowance which is $1,525,000 less than the budget estimate.

The Committee is in agreement with the House action regarding use of $250,000 in prior year appropriated funds for the microbiology laboratory of the Bureau of Veterinary Medicine. It is the Committee's understanding that this laboratory will be incorporated in the comprehensive headquarters laboratory complex for which design

funds are included in this bill. However, the agency still faces a problem in providing adequate space for this important function until the headquarters complex is available for occupancy. The Committee feels that the Animal and Plant Health Inspection Service (APHIS) could be of considerable aid to FDA in this regard. Elsewhere in this report, the Committee has suggested that APHIS provide FDA with a portion of their space which will be vacated by the relocation of a group of APHIS employees to Ames, Iowa. The Committee expects that responsible officials of the two agencies will work together to accomplish this temporary use of facilities.

The Committee concurs in the House reductions of $150,000 for the Special Pharmacological Animal Laboratory, $650,000 for the Radiological Health Facility, and $475,000 for other miscellaneous reductions.

Commodity Futures Trading Commission

1978 appropriation	$13,196,000
1979 budget estimate	15,804,000
House allowance	15,804,000
Committee recommendation	14,974,000

The Commodity Futures Trading Commission (CFTC) was established as an independent agency by the Commodity Futures Trading Commission Act of 1974 (88 Stat. 1389; 7 U.S.C. 4a).

The Commodity Futures Trading Commission (CFTC) administers the Commodity Exchange Act of 1936, as amended by the Commodity Futures Trading Commission Act of 1974. The act brought under Federal regulation futures trading in all goods, articles, services, rights, and interests; commodity options trading; and leverage trading in gold and silver bullion and coins; and otherwise strengthened the regulation of the commodity futures trading industry. It established a comprehensive regulatory structure to oversee the volatile futures trading complex.

The purpose of the Commission is to protect and to further the economic utility of futures markets by encouraging their efficiency and assuring their integrity and by protecting participants against abusive trade practices, fraud, and deceit. The object is to enable the markets better to serve their designated function: providing a price discovery mechanism and providing price risk insurance. In properly serving these functions, the futures markets contribute toward better planning, more efficient production, distribution and consumption, and more economical marketing. In these ways they serve the national public interest.

Programs in support of the overall mission include market surveillance, research and education, registration, audits and contract markets, and enforcement. CFTC activities are carried out in Washington, D.C., four regional offices located in Chicago, New York, Kansas City, and San Francisco; and a suboffice located in Minneapolis.

For the Commodity Futures Trading Commission for fiscal year 1979, the Committee recommends an appropriation of $14,974,000. This is $1,778,000 more than was appropriated for fiscal year 1978, and $830,000 less than the budget request and the amount provided in the House bill.

The Committee has not concurred in the recommendation of the House to provide the budgeted request of $1,862,000 for additional staffing, and has made a reduction of $900,000 in the budget request. These funds were originally requested for a commodity options pilot program; however, most options trading has been temporarily suspended. Accordingly, no funds for the pilot options program have been provided. The CFTC indicated that they still believed that additional personnel were necessary. Both the House and the Senate have passed CFTC reauthorization bills which ban options trading (with the exception of currently exempted options firms or other firms which may be exempted under existing CFTC procedures) until such time as the CFTC develops a thorough regulatory program, and an indication that they have the necessary staff resources and expertise. Should additional resources or personnel be required, the Committee will consider a supplemental request.

The Committee believes that CFTC has functioned poorly in the discharge of its responsibilities. This is made apparent by two recent reports—one by the General Accounting Office and the other by the Surveys and Investigations Staff of the House Appropriations Committee. Additional staffing is not a cure-all for the ills that trouble the agency, many of which are related to management.

The Committee has recommended an additional 30 personnel and $962,000. These additional personnel are for the action-oriented aspects of CFTC operations, such as the areas of enforcement, trading and markets, and surveillance. The Committee recommends that no additional personnel be placed in the Office of Policy Review or in the immediate administrative offices of the Commission.

The Committee also recommends an additional $70,000 above the budget request to monitor forward contracts on domestic agricultural commodities.

Farm Credit Administration

LIMITATION ON ADMINISTRATIVE EXPENSES

1978 limitation	($9,509,000)
1979 budget estimate	( )
House allowance	(10,575,000)
Committee recommendation	(10,575,000)

The Farm Credit Administration supervises a coordinated agricultural credit system of farm credit banks and associations which make credit available to farmers and their cooperatives.

Assessments based upon estimated administrative expenses are collected from agencies in the farm credit system and are available for administrative expenses. Obligations are incurred within fiscal year budgets approved by the Federal Farm Credit Board.

Supervision and examination of farm credit banks and associations.—Provision is made for supervision and examination of: 12 Federal land banks; 13 banks for cooperatives; 12 Federal intermediate credit banks; 529 Federal land bank associations; and 428 production credit associations. Also, these credit agencies are furnished such services as assistance in financing and investments, credit analysis, development of appraisal standards and policies, preparation of reports and budgets, and development and distribution of information on farm credit.

For the limitation on Farm Credit Administration expenses for fiscal year 1979, the Committee recommends a level of $10,575,000. This is $1,066,000 more than was provided for fiscal year 1978, and is the same as indicated to be required in 1979 by the Farm Credit Administration, and the same as the amount provided in the House bill.

National Alcohol Fuels Commission

1978 appropriation	
1979 budget estimate	
House allowance	
Committee recommendation	$1,500,000

The Committee recommends the appropriation of $1,500,000 for the expenses of the National Alcohol Fuels Commission. The Commission will be made up of 19 members including 12 members of Congress and 7 public members appointed by the President. The Commission will closely examine the potential for use of alcohol fuels, and make policy recommendations to the Congress not later than December, 1979. Its goal is to determine how to best use our abundant renewable natural resources to minimize dependence on petroleum and insure adequate energy supplies for the future.

For the National Alcohol Fuels Commission, the Committee recommends the appropriation of $1.5 million for fiscal year 1979. This is $1.5 million more than the budget request and the House allowance. This is the first year that funds are being provided for this purpose.

TITLE VI—GENERAL PROVISIONS

General provisions numbered 601, 602, 603, 604, 605, 606, and 610 through 612 have been included in appropriations bills in previous years.

Section 607, as amended by the Committee, permits appropriations to remain available until expended for the following accounts: Scientific Activities Overseas (special foreign currency program); Public Law 480; Buildings and Facilities, Agricultural Research Service; Buildings and Facilities, Food and Drug Administration; Agricultural Conservation Program and the appropriation to liquidate contract authorizations for the Agricultural Conservation Program.

The Committee recommends deletion of section 608. This section provided minimum employment ceilings for the Farmers Home Administration, the Agricultural Stabilization and Conservation Service, the Foreign Agricultural Service, and the Soil Conservation Service.

The Committee recommends deletion of section 609, which provides for limitation on authority of State committees use of funds for any nationally authorized program of the Agricultural Conservation Program. The restrictive language is not necessary since full responsibility and accountability for the program have been vested with county committees, with State committees providing direction and guidance.

The Committee recommends deletion of section 613 which prohibits payment of expenses of parties intervening in agency regulatory proceedings. Several decisions of the Comptroller General indicate that Federal agencies may pay these costs.

Compliance With Paragraph 8, Rule XVI, Standing Rules of the Senate

The recommendations of the Committee include an amendment which is not made to carry out provisions of existing law, and is brought to the attention of the Senate in accordance with rule XVI of the Standing Rules of the Senate. The amendment limits farm ownership loans to the rates equivalent to those charged the Government to borrow money, except for $100,000,000 which shall be available at an interest rate of not more than 5 percent to limited resource borrowers.

Rollcall Votes in Committee

1. By a vote of 13 to 7, the Committee defeated a substitute amendment to add $9.4 million for Processing, Storage, and Distribution research.

2. A motion to add $5.5 million for pay raises for personnel of agricultural experiment stations and $11.6 million for pay raises for Extension Service personnel was passed by a vote of 12 to 7.

3. A motion to increase the appropriation by $25 million for special milk in schools was passed by a vote of 12 to 9.

4. The Committee defeated a motion to restore the House language prohibiting the use of Public Law 480 funds for assistance to Korea by a vote of 8 to 5.

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COMPARATIVE STATEMENT OF NEW BUDGET (OBLIGATIONAL) AND AMOUNTS RECOMMENDED IN

[Amounts

Item	1978 Appropriation	Budget estimate
TITLE I - AGRICULTURAL PROGRAMS		
PRODUCTION, PROCESSING AND MARKETING		
Office of the Secretary	2,641,000	4,473,000
Departmental Administration	14,276,000	17,696,000
Economic Management Support Center	3,006,000	---
Office of the Inspector General	20,204,000	32,186,000
Transfer from food stamp program	(8,231,000)	---
Total, Office of the Inspector General	(28,435,000)	(32,186,000)
Office of the General Counsel	9,450,000	10,325,000
Federal Grain Inspection Service: Salaries and expenses	11,000,000	22,708,000
Agricultural Research Service:		
Research	324,859,000	323,088,000
Special fund (reappropriation)	(2,000,000)	(2,000,000)
Buildings and facilities	---	500,000
Scientific activities overseas (special foreign currency program)	5,750,000	7,500,000
Total, Agricultural Research Service	332,609,000	331,088,000
Animal and Plant Health Inspection Service:		
Disease and Pest Control	199,623,000	220,213,000
Meat and Poultry Inspection	241,581,000	---
Total, Animal and Plant Health Inspection Service	441,204,000	220,213,000
Food Safety and Quality Service	---	271,475,000
Cooperative State Research Service	143,150,000	158,150,000
Extension Service	257,221,000	262,047,000
National Agricultural Library	6,877,000	7,631,000
Statistical Reporting Service	36,996,000	---
Economic Research Service	29,864,000	---
Farmer Cooperative Service	3,370,000	---
Economics, Statistics and Cooperative Service	---	80,008,000
Agricultural Marketing Service:		
Marketing Services	48,484,000	49,231,000
Payments to States and possessions	1,600,000	---
Total, Agricultural Marketing Service	50,084,000	49,231,000
Packers and Stockyards Administration	6,252,000	---
World food and agricultural outlook and situation board	---	1,009,000
Total, Production, Processing and Marketing	1,368,204,000	1,468,240,000

AUTHORITY FOR FISCAL YEAR 1978 AND BUDGET ESTIMATES THE BILL FOR FISCAL YEAR 1979

in dollars]

House allowance	Committee recommendation	Increase (+) or decrease (−) compared with—		
		1978 Appropriation	Budget estimate	House allowance
3,791,000	4,310,000	+1,669,000	−163,000	+519,000
17,483,000	18,647,000	+4,371,000	+951,000	+1,164,000
---	---	−3,006,000	---	---
22,945,000	31,564,000	+11,360,000	−622,000	+8,619,000
(8,619,000)	---	(−8,231,000)	---	(−8,619,000)
(31,564,000)	(31,564,000)	(+3,129,000)	(−622,000)	---
10,251,000	10,251,000	+801,000	−74,000	---
22,680,000	22,680,000	+11,680,000	−28,000	---
334,100,000	337,791,000	+12,932,000	+14,703,000	+3,691,000
(2,000,000)	(2,000,000)	---	---	---
35,720,000	15,000,000	+15,000,000	+14,500,000	−20,720,000
5,750,000	5,750,000	---	−1,750,000	---
375,570,000	358,541,000	+25,932,000	+27,453,000	−17,029,000
230,817,000	228,150,000	+28,527,000	+7,937,000	−2,667,000
---	---	−241,581,000	---	---
230,817,000	228,150,000	−213,054,000	+7,937,000	−2,667,000
271,019,000	271,104,000	+271,104,000	−371,000	+85,000
163,057,000	179,520,000	+36,370,000	+21,370,000	+16,463,000
276,747,000	273,926,000	+16,705,000	+11,879,000	−2,821,000
7,527,000	7,527,000	+650,000	−104,000	---
---	---	−36,996,000	---	---
---	---	−29,864,000	---	---
---	---	−3,370,000	---	---
79,860,000	80,137,000	+80,137,000	+129,000	+277,000
46,502,000	49,070,000	+586,000	−161,000	+2,568,000
2,000,000	---	−1,600,000	---	−2,000,000
48,502,000	49,070,000	−1,014,000	−161,000	+568,000
---	---	−6,252,000	---	---
1,009,000	1,009,000	+1,009,000	---	---
1,531,258,000	1,536,436,000	+168,432,000	+68,196,000	+5,178,000

COMPARATIVE STATEMENT OF NEW BUDGET (OBLIGATIONAL) AND AMOUNTS RECOMMENDED IN THE

[Amounts

Item	1978 Appropriation	Budget estimate
FARM INCOME STABILIZATION		
Agricultural Stabilization and Conservation Service:		
Salaries and expenses	161,838,000	227,816,000
(Transfer from Commodity Credit Corporation)	(76,415,000)	(99,865,000)
Total, salaries and expenses, ASCS	(238,253,000)	(327,681,000)
Dairy and beekeeper indemnity programs	4,050,000	3,240,000
Total, Agricultural Stabilization and Conservation Service	165,888,000	231,056,000
Federal Crop Insurance Corporation:		
Administrative and operating expenses	12,000,000	12,000,000
Federal Crop Insurance Corporation Fund	(11,413,000)	(12,669,000)
Subscription to Capital Stock	30,000,000	---
Total, Federal Crop Insurance Corporation	(53,413,000)	(24,669,000)
Commodity Credit Corporation:		
New borrowing authority	---	9,509,100,000
(Liquidation of contract authority)	---	(990,900,000)
Total new authority to borrow	---	(10,500,000,000)
Reimbursement for net realized losses	524,342,000	990,900,000
(Limitation on administrative expenses)	(39,800,000)	(50,100,000)
Total, Farm Income Stabilization	732,230,000	10,743,056,000
Total, title I, new budget (obligational) authority, Agricultural Programs	2,100,434,000	12,211,296,000
TITLE II - RURAL DEVELOPMENT PROGRAMS		
RURAL DEVELOPMENT ASSISTANCE		
Farmers Home Administration:		
Rural Housing Insurance Fund:		
Direct loans	(15,000,000)	(24,000,000)
Insured loans	(3,379,000,000)	(3,588,200,000)
Guaranteed loans	(900,000,000)	---
Construction Defects Authorization	---	(5,000,000)
Rent Supplement Authorization	(349,072,000)	(370,013,000)
Reimbursement for interest and other losses	327,402,000	320,192,000
Reimbursement for rent supplement payments	17,000,000	43,740,000
Total, Rural Housing Insurance Fund	(4,638,402,000)	(3,981,132,000)
Agricultural Credit Insurance Fund:		
Insured real estate loans	(620,000,000)	(625,600,000)
Soil conservation loans	(27,000,000)	(30,000,000)
Operating loans	(825,000,000)	(825,000,000)

AUTHORITY FOR FISCAL YEAR 1978 AND BUDGET ESTIMATES BILL FOR FISCAL YEAR 1979—Continued

in dollars]

House allowance	Committee recommendation	Increase (+) or decrease (−) compared with—		
		1978 Appropriation	Budget estimate	House allowance
227,552,000	217,527,000	+55,689,000	−10,289,000	−10,025,000
(99,865,000)	(99,865,000)	(+23,450,000)	---	---
(327,417,000)	(317,392,000)	(+79,139,000)	(−10,289,000)	(−10,025,000)
3,240,000	3,240,000	−810,000	---	---
230,792,000	220,767,000	+54,879,000	−10,289,000	−10,025,000
12,000,000	12,000,000	---	---	---
(12,669,000)	(12,669,000)	(+1,256,000)	---	---
---	---	−30,000,000	---	---
(24,669,000)	(24,669,000)	(−28,744,000)	---	---
4,509,100,000	9,509,100,000	+9,509,100,000	---	+5,000,000,000
(990,900,000)	(990,900,000)	(+990,900,000)	---	---
(5,500,000,000)	(10,500,000,000)	(+10,500,000,000)	---	(+5,000,000,000)
580,000,000	990,900,000	+466,558,000	---	+410,900,000
(50,100,000)	(45,898,000)	(+6,098,000)	(−4,202,000)	(−4,202,000)
5,331,892,000	10,732,767,000	+10,000,537,000	−10,289,000	+5,400,875,000
6,863,150,000	12,269,203,000	+10,168,768,000	+57,907,000	+5,406,053,000
(24,000,000)	(24,000,000)	(+9,000,000)	---	---
(3,774,200,000)	(3,776,000,000)	(+397,000,000)	(+187,800,000)	(+1,800,000)
---	(500,000,000)	(−400,000,000)	(+500,000,000)	(+500,000,000)
(1,000,000)	(1,000,000)	(+1,000,000)	(−4,000,000)	---
(370,013,000)	(555,000,000)	(+205,928,000)	(+184,987,000)	(+184,987,000)
320,192,000	320,192,000	−7,210,000	---	---
43,740,000	54,240,000	+37,240,000	+10,500,000	+10,500,000
(4,163,132,000)	(4,675,432,000)	(+37,030,000)	(+694,300,000)	(+512,300,000)
(875,600,000)	(875,600,000)	(+255,600,000)	(+250,000,000)	---
(30,000,000)	(30,000,000)	(+3,000,000)	---	---
(825,000,000)	(825,000,000)	---	---	---

COMPARATIVE STATEMENT OF NEW BUDGET (OBLIGATIONAL) AND AMOUNTS RECOMMENDED IN THE

[Amounts

Item	1978 Appropriation	Budget estimate
Emergency loans	(1,200,000,000)	(578,000,000)
Reimbursement for interest and other losses	164,735,000	143,565,000
Total, Agricultural Credit Insurance Fund	(2,936,735,000)	(2,202,165,000)
Rural Development Insurance Fund:		
Reimbursement for losses	75,547,000	107,276,000
Water and sewer facility loans	(750,000,000)	(800,000,000)
Industrial development loans	(1,000,000,000)	(1,100,000,000)
Community facility loans	(250,000,000)	(250,000,000)
Total, Rural Development Insurance Fund	(2,075,547,000)	(2,257,276,000)
Rural water and waste disposal grants	250,000,000	265,000,000
Very low-income housing repair grants	9,000,000	24,000,000
Rural housing for domestic farm labor	7,500,000	38,000,000
Mutual and self-help housing	9,000,000	16,500,000
Rural Community Fire Protection Grants	3,500,000	---
Rural development planning grants	5,000,000	---
Rural housing supervisory assistance grants	---	---
Rural Development Grants	10,000,000	10,000,000
Self-help housing. Land development fund	---	---
Salaries and expenses	185,184,000	209,891,000
(Transfer from loan accounts)	(3,500,000)	(3,500,000)
Total, salaries and expenses	(188,684,000)	(213,391,000)
Total, Farmers Home Administration	1,063,868,000	1,178,164,000
Rural Development Service	1,663,000	---
Rural Electrification Administration:		
Rural electrification & telephone revolving fund:		
Electric loans	(750,000,000)	(735,000,000)
Telephone loans	(250,000,000)	(250,000,000)
Total, loans	(1,000,000,000)	(985,000,000)
Capitalization of Rural Telephone Bank	(30,000,000)	(30,000,000)
Salaries and expenses	22,567,000	24,833,000
Total, Rural Electrification Administration	22,567,000	24,833,000
Total, Rural Development Assistance	1,088,098,000	1,202,997,000

AUTHORITY FOR FISCAL YEAR 1978 AND BUDGET ESTIMATES BILL FOR FISCAL YEAR 1979—Continued

[In dollars]

House allowance	Committee recommendation	Increase (+) or decrease (−) compared with—		
		1978 Appropriation	Budget estimate	House allowance
(578,000,000)	(578,000,000)	(−622,000,000)	---	---
143,565,000	143,565,000	−21,170,000	---	---
(2,452,165,000)	(2,452,165,000)	(−384,570,000)	(+250,000,000)	---
107,276,000	107, 76,000	+31,729,000	---	---
(900,000,000)	(900,000,000)	(+150,000,000)	(+100,000,000)	---
(1,100,000,000)	(1,100,000,000)	(+100,000,000)	---	---
(250,000,000)	(250,000,000)	---	---	---
(2,357,276,000)	(2,357,276,000)	(+281,729,000)	(+100,000,000)	---
300,000,000	300,000,000	+50,000,000	+35,000,000	---
24,000,000	24,000,000	+15,000,000	---	---
38,000,000	38,000,000	+30,500,000	---	---
16,500,000	16,500,000	+7,500,000	---	---
3,500,000	3,500,000	---	+3,500,000	---
5,000,000	5,000,000	---	+5,000,000	---
2,500,000	2,500,000	+2,500,000	+2,500,000	---
10,000,000	10,000,000	---	---	---
---	1,000,000	+1,000,000	+1,000,000	+1,000,000
219,566,000	230,582,000	+45,398,000	+20,691,000	+11,016,000
(3,500,000)	(3,500,000)	---	---	---
(223,066,000)	(234,082,000)	(+45,398,000)	(+20,691,000)	(+11,016,000)
1,233,839,000	1,256,355,000	+192,487,000	+78,191,000	+22,516,000
---	---	−1,663,000	---	---
(850,000,000)	(850,000,000)	(+100,000,000)	(+115,000,000)	---
(250,000,000)	(250,000,000)	---	---	---
(1,100,000,000)	(1,100,000,000)	(+100,000,000)	(+115,000,000)	---
(30,000,000)	(30,000,000)	---	---	---
24,905,000	24,658,000	+2,091,000	−175,000	−247,000
24,905,000	24,658,000	+2,091,000	−175,000	−247,000
1,258,744,000	1,281,013,000	+192,915,000	+78,016,000	+22,269,000

COMPARATIVE STATEMENT OF NEW BUDGET (OBLIGATIONAL) AND AMOUNTS RECOMMENDED IN THE

[Amounts

Item	1978 Appropriation	Budget estimate
CONSERVATION		
Soil Conservation Service:		
Conservation operations	229,060,000	258,659,000
River basin surveys and investigations	15,506,000	16,487,000
Watershed planning	11,847,000	5,759,000
Watershed and flood prevention operations	186,492,000	227,522,000
Resource conservation and development	31,033,000	6,797,000
Great Plains conservation program	21,704,000	8,023,000
Non Point Source Pollution Control-Grant Agreemen and Technical Assistance	---	---
Total, Soil Conservation Service	495,642,000	523,247,000
Agricultural Stabilization and Conservation Service:		
Agricultural Conservation Program:		
(Liquidation of contract authority)	(201,600,000)	(115,000,000)
Advance authorization (contract authority)	226,600,000	---
Appropriation	---	100,000,000
Non-point source pollution control - cost sharing	---	---
Forestry incentives program	15,000,000	10,000,000
Water Bank Act program	10,000,000	10,000,000
Emergency conservation measures	10,000,000	10,000,000
Total, Agricultural Stabilization and Conservation Service	261,600,000	130,000,000
Total, Conservation	757,242,000	653,247,000
Total, title II, Rural Development Programs: New budget (obligational) authority	1,845,340,000	1,856,244,000
TITLE III - DOMESTIC FOOD PROGRAMS		
Food and Nutrition Service:		
Child nutrition programs	1,488,344,000	1,281,535,000
(Transfer from sec. 32)	(1,014,557,000)	(1,411,575,000)
Total, Child nutrition programs	(2,502,901,000)	(2,693,110,000)
Special milk program	155,000,000	142,000,000
Special supplemental food program (WIC)	247,000,000	555,000,000
Food stamp program	5,627,000,000	5,779,200,000
Food donations program	31,400,000	12,800,000
Elderly feeding program	30,000,000	---
Food Program Administration	64,951,000	72,223,000
Total, title III, new budget (obligational) authority, Domestic Food Programs	7,643,695,000	7,842,758,000

AUTHORITY FOR FISCAL YEAR 1978 AND BUDGET ESTIMATES BILL FOR FISCAL YEAR 1979—Continued

[In dollars]

House allowance	Committee recommendation	Increase (+) or decrease (-) compared with—		
		1978 Appropriation	Budget estimate	House allowance
262,491,000	255,296,000	+26,236,000	-3,363,000	-7,195,000
16,487,000	16,487,000	+981,000	---	---
12,587,000	5,759,000	-6,088,000	---	-6,828,000
169,607,000	227,522,000	+41,030,000	---	+57,915,000
31,979,000	16,797,000	-14,236,000	+10,000,000	-15,182,000
23,288,000	23,288,000	+1,584,000	+15,265,000	---
---	75,000,000	+75,000,000	+75,000,000	+75,000,000
516,439,000	620,149,000	+124,507,000	+96,902,000	+103,710,000
(115,000,000)	(115,000,000)	(-86,600,000)	---	---
---	---	-226,600,000	---	---
190,000,000	85,000,000	+85,000,000	-15,000,000	-105,000,000
25,000,000	25,000,000	+25,000,000	+25,000,000	---
15,000,000	17,500,000	+2,500,000	+7,500,000	+2,500,000
10,000,000	10,000,000	---	---	---
10,000,000	10,000,000	---	---	---
250,000,000	147,500,000	-114,100,000	+17,500,000	-102,500,000
766,439,000	767,649,000	+10,407,000	+114,402,000	+1,210,000
2,025,183,000	2,048,662,000	+203,322,000	+192,418,000	+23,479,000
1,364,535,000	1,281,535,000	-206,809,000	---	-83,000,000
(1,336,575,000)	(1,411,575,000)	(+397,018,000)	---	(+75,000,000)
(2,701,110,000)	(2,693,110,000)	(+190,209,000)	---	(-8,000,000)
142,000,000	142,000,000	-13,000,000	---	---
580,000,000	569,500,000	+322,500,000	+14,500,000	-10,500,000
5,779,200,000	5,779,200,000	+152,200,000	---	---
12,800,000	12,800,000	-18,600,000	---	---
---	---	-30,000,000	---	---
71,300,000	74,275,000	+9,324,000	+2,052,000	+2,975,000
7,949,835,000	7,859,310,000	+215,615,000	+16,552,000	-90,525,000

COMPARATIVE STATEMENT OF NEW BUDGET (OBLIGATIONAL) AND AMOUNTS RECOMMENDED IN THE

[Amounts

Item	1978 Appropriation	Budget estimate
TITLE IV - INTERNATIONAL PROGRAMS		
Foreign Agricultural Service	45,665,000	51,663,000
International development staff	---	199,000
Public Law 480:		
Title I and III - Credit sales	276,865,000	339,400,000
Title II - Commodities for disposition abroad	646,020,000	466,500,000
Sales manager	(3,474,000)	(4,202,000)
Total, Public Law 480	922,885,000	805,900,000
Total, title IV, new budget (obligational) authority, International Programs	968,550,000	857,762,000
TITLE V - RELATED AGENCIES		
DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE		
Food and Drug Administration:		
Salaries and expenses	276,243,000	294,304,000
Buildings and facilities	6,665,000	11,984,000
Total, Food and Drug Administration	282,908,000	306,288,000
INDEPENDENT AGENCIES		
Commodity Futures Trading Commission	13,196,000	15,804,000
Farm Credit Administration (limitation on administrative expenses)	(9,509,000)	---
National Alcohol Fuels Commission	---	---
Total, title V, new budget (obligational) authority, Related Agencies	296,104,000	322,092,000

AUTHORITY FOR FISCAL YEAR 1978 AND BUDGET ESTIMATES BILL FOR FISCAL YEAR 1979—Continued

in dollars]

House allowance	Committee recommendation	Increase (+) or decrease (−) compared with—		
		1978 Appropriation	Budget estimate	House allowance
53,645,000	56,403,000	+10,738,000	+4,740,000	+2,758,000
199,000	199,000	+199,000	---	---
339,400,000	339,400,000	+62,535,000	---	---
466,500,000	466,500,000	−179,520,000	---	---
(4,202,000)	---	(−3,474,000)	(−4,202,000)	(−4,202,000)
805,900,000	805,900,000	−116,985,000	---	---
859,744,000	862,502,000	−106,048,000	+4,740,000	+2,758,000
289,854,000	295,454,000	+19,211,000	+1,150,000	+5,600,000
10,459,000	10,459,000	+3,794,000	−1,525,000	---
300,313,000	305,913,000	+23,005,000	−375,000	+5,600,000
15,804,000	14,974,000	+1,778,000	−830,000	−830,000
(10,575,000)	(10,575,000)	(+1,066,000)	(+10,575,000)	---
---	1,500,000	+1,500,000	+1,500,000	+1,500,000
316,117,000	322,387,000	+26,283,000	+295,000	+6,270,000

COMPARATIVE STATEMENT OF NEW BUDGET (OBLIGATIONAL) AND AMOUNTS RECOMMENDED IN THE

[Amounts

Item	1978 Appropriation	Budget estimate
RECAPITULATION		
Title I - Agricultural programs	2,100,434,000	12,211,296,000
Title II - Rural development programs	1,845,340,000	1,856,244,000
Title III - Domestic food programs	7,643,695,000	7,842,758,000
Title IV - International programs	968,550,000	857,762,000
Title V - Related agencies	296,104,000	322,092,000
Total, New budget (obligational) authority	12,854,123,000	23,090,152,000
Transfer from sec. 32	1,014,557,000	1,411,575,000
Total obligational authority	13,868,680,000	24,501,727,000
Consisting of:		
1. Appropriations	12,625,523,000	23,090,152,000
2. Reappropriations	2,000,000	2,000,000
3. Contract authorizations	226,600,000	---
4. Direct and insured loan level	8,066,000,000	7,710,800,000
5. Guaranteed loan level	1,900,000,000	1,100,000,000
6. Rent supplement authorization	349,072,000	370,013,000
Memoranda:		
1. Appropriations to liquidate contract authorizations	201,600,000	1,105,900,000
2. Appropriations, including appropriations to liquidate contract authority	12,827,123,000	24,196,052,000
3. Transfers from sec. 32	1,014,557,000	1,411,575,000
4. Transfers from Commodity Credit Corporation	76,415,000	99,865,000

UTHORITY FOR FISCAL YEAR 1978 AND BUDGET ESTIMATES ILL FOR FISCAL YEAR 1979—Continued

dollars]

House allowance	Committee recommendation	Increase (+) or decrease (−) compared with—		
		1978 Appropriation	Budget estimate	House allowance
6,863,150,000	12,269,203,000	+10,168,769,000	+57,907,000	+5,406,053,000
2,025,183,000	2,048,662,000	+203,322,000	+192,418,000	+23,479,000
7,949,835,000	7,859,310,000	+215,615,000	+16,552,000	−90,525,000
859,744,000	862,502,000	−106,048,000	+4,740,000	+2,758,000
316,117,000	322,387,000	+26,283,000	+295,000	+6,270,000
8,014,029,000	23,362,064,000	+10,507,941,000	+271,912,000	+5,348,035,000
1,336,575,000	1,411,575,000	+397,018,000	---	+75,000,000
9,350,604,000	24,773,639,000	+10,904,959,000	+271,912,000	+5,423,035,000
8,014,029,000	23,362,064,000	+10,736,541,000	+271,912,000	+5,348,035,000
2,000,000	2,000,000	---	---	---
---	---	−226,600,000	---	---
8,357,800,000	8,359,600,000	+293,600,000	+648,800,000	+1,800,000
1,100,000,000	1,600,000,000	−300,000,000	+500,000,000	+500,000,000
370,013,000	555,000,000	+205,928,000	+184,987,000	+184,987,000
1,105,900,000	1,105,900,000	+904,300,000	---	---
19,119,929,000	24,467,964,000	+11,640,841,000	+271,912,000	+5,348,035,000
1,336,575,000	1,411,575,000	+397,018,000	---	+75,000,000
99,865,000	99,865,000	+23,450,000	---	---

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Calendar No. 983

95TH CONGRESS, 2d Session } SENATE { REPORT No. 95-1059

HUMANE METHODS OF SLAUGHTER ACT OF 1978

AUGUST 1 (legislative day, MAY 17), 1978.—Ordered to be printed

Mr. DOLE, from the Committee on Agriculture, Nutrition, and Forestry, submitted the following

REPORT

[To accompany S. 3092]

The Committee on Agriculture, Nutrition, and Forestry, to which was referred the bill (S. 3092) to amend the Federal Meat Inspection Act to require that meat inspected and approved under such act be produced only from livestock slaughtered in accordance with humane methods, having considered the same, reports favorably thereon with an amendment and an amendment to the title and recommends that the bill as amended do pass.

SHORT EXPLANATION

S. 3092 requires that *all* meat inspected and approved under the Federal Meat Inspection Act be produced from livestock slaughtered in accordance with humane methods as set forth in the Humane Slaughter Act of 1958. Currently, under the Humane Slaughter Act, only meat that is sold to the Federal Government must be produced from livestock that is slaughtered in a humane manner.

Under S. 3092, Federal meat inspectors would be required to make such inspections as would be necessary to prevent inhumane slaughtering. Both criminal and administrative sanctions would apply for violations. In addition, the bill prohibits importation of inhumanely slaughtered meat.

The bill would take effect 1 year after enactment. Under certain circumstances, however, the Secretary of Agriculture, upon application, could grant additional time if he finds that compliance with the bill on the effective date would cause an undue hardship.

The exemptions for ritual slaughter and the handling of livestock in connection with such slaughter, currently contained in the Humane Slaughter Act, are retained in S. 3092.

★(Star Print) 29-010

Committee Amendment

The Committee amendment strikes all after the enacting clause and inserts in lieu thereof an amendment in the nature of a substitute. The committee amendment contains technical amendments to the bill and—

(1) Authorizes the Secretary to refuse or temporarily suspend inspection at plants that are inhumanely slaughtering or handling livestock;

(2) Retains the exemption for ritual slaughter and the handling in connection with such slaughter that is currently contained in the Humane Slaughter Act; and

(3) Authorizes the Secretary to grant such additional time after the effective date of the bill (1 year following enactment of the bill) for persons, firms, or corporations to come into compliance with the bill, if the Secretary determines, upon application, that compliance within the 1-year period would cause undue hardship on a person, firm, or corporation.

Background and Need

I.

The Humane Slaughter Act specifically found several methods of slaughtering and handling in connection with such slaughter to be humane. The 1958 act also required the Secretary of Agriculture to designate methods of slaughter and handling that must be adhered to in all slaughtering plants selling meat to the Federal Government. Ritual slaughter in accordance with the Jewish faith or any other religious faith was declared to be humane and exempt from the provisions of the act.

II.

The impetus for the enactment of the Humane Slaughter Act was a growing national concern for the humane treatment of animals. Meat packers and processors, who may have been initially resistant to converting to humane slaughter methods, soon found an economic incentive to adopt those methods of slaughter and handling in connection with slaughter. Humane handling and slaughter reduce the incidence of injury to animals, which increases the amount of usable product per carcass. The risk of injury to slaughterhouse employees, who must work near the animals, is reduced through the use of humane methods of slaughter and handling.

In the years following the enactment of the Humane Slaughter Act, the vast majority of meat slaughterers and processors in the United States and those in foreign countries that export meat to the United States have adopted humane methods of slaughter and handling. Australia and New Zealand are the only countries exporting meat to the United States that do not employ humane slaughter techniques for all species. The slaughter of sheep in these countries does not comply with humaneness standards, although New Zealand is phasing in humane slaughter practices in the sheep industry.

III.

The following data were provided to the committee by the Department of Agriculture:

Type of plant	Total plants	Number which slaughter some or all species nonhumanely	
		Number	Percent
Federally inspected	1,771	196	11
State-inspected	2,564	136	5
Foreign exporting to United States	522	64	12

IV.

The following is a listing of methods of humane slaughter currently approved and the extent of their use:

Approved methods	*General use*
Administration of carbon dioxide (CO_2) gas.	Only a handful of plants continue to use this method in slaughtering hogs.
Application of captive bolt stunners.	Most widely-used methods for slaughtering cattle; 75 to 80 percent of all cattle are stunned in this manner. It is occasionally used with sheep and calves.
Shooting with firearms (generally with a .22 rifle).	Rarely used today.
Administration of electric current.	Most widely-used method of slaughtering hogs. Approximately 90 percent of all hogs are stunned in this manner. It is frequently used with sheep as well.

V.

The widespread acceptance of humane methods of slaughter and handling by the industry and the abiding concern of many Americans over isolated, but persistent, reports of continued cruelty to and abuse of livestock at the few plants that are not already using humane methods justify the imposition of a humane slaughtering and handling requirement for all meat sold in the United States.

Committee Consideration

I.

The Subcommittee on Agricultural Research and General Legislation held a hearing on S. 3092 on June 15, 1978. At that hearing, testimony was received from representatives of the Department of Agriculture, humane groups, and the meat industry. All of the testimony received was in favor of enactment of S. 3092, with minor amendments.

The views of representatives of various Jewish groups were solicited and considered following the hearing.

II.

The amendment in the nature of a substitute was considered by the Committee on Agriculture, Nutrition, and Forestry on July 19, 1978. The full committee voted unanimously to report S. 3092, as amended, to the Senate.

III.

The representatives of humane groups expressed concern regarding at what point in the slaughtering process the provision for humane handling of livestock would become enforced and what the scope of this provision would be. It is the committee's intent that handling in connection with slaughter be interpreted by the Secretary to begin at the time the livestock come into the custody of the slaughtering establishment, up to and including the moment of slaughter. Department of Agriculture regulations under the 1958 Humane Slaughter Act are not sufficiently specific on this point. The committee expects the Department to issue more detailed regulations under this amendment to the Federal Meat Inspection Act.

IV.

The committee is aware that the legislatures of States that operate State meat inspection systems must enact legislation comparable to S. 3092 in order to maintain their "at least equal to" status, and that some State legislatures do not meet every year, or have already completed their 1978 sessions. It is the committee's intent that no State be designated for Federal inspection because of an unavoidable delay in enacting such legislation.

Section-by-Section Analysis

Short title

The first section provides that the bill may be cited as the "Humane Methods of Slaughter Act of 1978".

Section 2. Inspection of slaughter methods; refusal or temporary suspension of inspection

Section 2 amends section 3 of the Federal Meat Inspection Act to require the Secretary of Agriculture to make inspections of methods by which livestock, subject to the Federal Meat Inspection Act, are slaughtered and handled in connection with slaughter. The Secretary is authorized to refuse to provide inspection or to temporarily suspend inspection if the Secretary finds any failure to follow the requirements of the Humane Slaughter Act of 1958. An establishment would be required to furnish appropriate assurances of compliance before inspection would be resumed.

Section 3. Prohibited acts

Section 3 amends section 10 of the Federal Meat Inspection Act to add as a prohibited act under that act any slaughtering or handling in connection with slaughter that is not in accordance with the Humane Slaughter Act of 1958.

Section 4. Imported meat

Section 4 amends section 20(a) of the Federal Meat Inspection Act to prohibit the importation of carcasses, parts of carcasses, meat or meat food products unless the livestock from which they were produced was slaughtered and handled in connection with slaughter in accordance with the Humane Slaughter Act of 1958.

Section 5. Repeal of certain provisions of the Humane Methods of Slaughter Act of 1958

Section 5(a) amends section 2(b) of the Humane Slaughter Act of 1958 to add handling in connection with religious ritual slaughter to the section's finding that certain methods of slaughter and pre-slaughter handling are humane. (This exemption is currently contained in section 4(c) of the Humane Slaughter Act, which is repealed by section 5(b) of the bill.)

Section 5(b) repeals section 3 (which prohibits Federal Government procurement of products of livestock not slaughtered according to humane methods, and which requires suppliers of livestock products to file a statement of eligibility with the Government agencies they supply), section 4(c) (which requires the Secretary to provide means of indentifying carcasses which have been slaughtered humanely), and section 5 (which establishes an advisory committee to consult with and make recommendations to the Secretary on the administration of the Act), of the Humane Slaughter Act.

Section 5(c) deletes from section 4(b) of the 1958 Act a reference to section 3 of the Humane Slaughter Act that is repealed by section 5(b) of S. 3092.

Section 5(d) and (e) make technical and conforming changes in sections 4(a) and (b) of the Humane Slaughter Act.

Section 6. Religious ritual exemption

Section 6 exempts ritual slaughter (as defined by section 2(b) of the Humane Slaughter Act of 1958) and the handling or other preparation of livestock for ritual slaughter from the terms of the bill.

Section 7. Effective date; extension

Section 7 provides that the bill's provisions shall become effective 1 year after enactment, except that the Secretary may grant extensions of the deadline to an applicant who would suffer undue hardship resulting from compliance on the bill's effective date.

Regulatory Impact Evaluation

In complaince with subsection 5 of rule XXIX of the Standing Rules of the Senate, the committee makes the following evaluation of the regulatory impact that would be incurred in carrying out S. 3092.

I.

S. 3092 would require that all federally-inspected, intrastate, and certified foreign slaughter plants use humane methods in handling and slaughtering red meat animals in accordance with the provisions of the Humane Slaughter Act. The bill incorporates the penalty provisions of the Federal Meat Inspection Act and, therefore, violations of the humane slaughter and handling requirements would result in the

imposition of the criminal penalties under that Act for such violations. The Secretary, under S. 3092, may refuse to provide inspection, if he finds that livestock have been inhumanely slaughtered or handled. The refusal of inspection service would remain in effect until the Secretary receives assurances that all further slaughtering and handling will be conducted humanely.

II.

Plants that do not now slaughter humanely may have to acquire new equipment to enable them to comply with the law. These costs could range from $200 to $300 for a captive bolt pistol, to $500 for an electric stunner, and from $30,000 to $50,000 for a carbon dioxide charge device. Devices to restrain animals before stunning range in price from $8,000 to $10,000. These costs, if incurred, would only be startup costs and humane methods of slaughter and handling have economic advantages over inhumane methods. Use of humane slaughter methods significantly reduces the occurrence of bruises and broken bones thereby reducing the amount of meat condemned due to such injuries. It is impossible at this time to accurately estimate the equipment costs to slaughterers, their economic returns, or the effect on food prices to consumers resulting from the enactment of the bill.

III.

Sheep slaughtered in Australia and New Zealand that are currently being exported to the United States are not humanely slaughtered. New Zealand is phasing in humane slaughter practices in the sheep industry. The requirement of humane slaughter and handling for imported meat is not viewed by the committee as creating a nontariff trade barrier. The committee believes that Australia and New Zealand will intensify their efforts to comply with humane slaughter requirements and thereby be able to retain the U.S. market for their products.

IV.

The bill will in no way restrict the freedom of members of the Jewish faith or other religions to conduct ritual slaughter in accordance with their faith. S. 3092 and the Humane Slaughter Act specifically exempts kosher and other ritual slaughter methods.

V.

Paperwork would be decreased because the Department of Agriculture would no longer be required to identify carcasses that have been handled and slaughtered humanely. The 1958 Humane Slaughter Act now requires that the Secretary provide such identification in order to assure that the Federal Government does not purchase meat products obtained from livestock that have been inhumanely handled or slaughtered. To carry out this mandate, the Department has developed regulations requiring periodic publication in the *Federal Register* of a list of plants that use humane handling and slaughter practices. Elimination of this requirement will result in an annual savings to the Department of approximately $7,700 in printing costs. In addition,

computer and personnel time valued at an estimated $6,500 could be redirected to other Department functions.

Because each contractor intending to sell meat to the Federal Government must prepare a "Statement of Eligibility" in which the contractor agrees to supply only meat from humanely slaughtered animals, paperwork requirements for producers and Federal food procurement officials will also be slightly reduced. Exact cost savings figures from these paperwork reductions are not available.

VI.

Enactment of the bill will not affect the personal privacy of the individuals subject to regulation under the Federal Meat Inspection Act or the Humane Slaughter Act.

VII.

The inspection costs for Department of Agriculture meat inspection activities are not anticipated to increase because of enactment of the bill. Federal meat inspectors are already located in slaughtering plants. They can easily make the adjustments necessary to monitor compliance with the humane handling and slaughter requirements contained in the bill.

Administration Views

I.

In a letter to Chairman Talmadge dated July 28, 1978, the Secretary of Agriculture stated that the Department recommended the enactment of S. 3092 with certain amendments. The bill, as reported, incorporates the suggestion made by the Department that the Secretary may grant additional time for implementation to any State that must amend its meat inspection law in order to comply with S. 3092. The letter from the Secretary reads as follows:

Department of Agriculture,
Office of the Secretary,
Washington, D.C., July 28, 1978.

Hon. Herman Talmadge,
Chairman, Committee on Agriculture, Nutrition, and Forestry, U.S. Senate, Washington, D.C.

Dear Mr. Chairman: This is in reply to your request for a report on S. 3092, a bill "To amend the Federal Meat Inspection Act to require that meat inspected under such Act be produced only from livestock slaughtered in accordance with humane methods."

This Department recommends that this bill be enacted if amended as suggested below.

S. 3092 would amend sections 3 and 10 of the Federal Meat Inspection Act (21 U.S.C. 603 and 610) to require that all federally inspected meat plants adopt humane livestock handling and slaughter practices, in accordance with the provisions of the Humane Slaughter Act of 1958 (7 U.S.C. 1901–1906). This amendment would also affect all State inspected plants engaged solely in intrastate commerce, since a State

must have meat inspection requirements at least equal to those under titles I and IV of the Federal Meat Inspection Act. Otherwise, the Secretary must designate the State as one not having a program at least equal to the Federal program and extend the Federal requirements to all plants within that State. Therefore, States may have to amend their laws in line with the bill.

Slaughter establishments would have to be in compliance within 1 year after enactment. If additional time is required in individual cases, the Secretary would have discretionary authority to approve applications for a time extension not to exceed 6 months. Failure to abide by these standards would constitute violations of the Federal Meat Inspection Act and would result in imposition of the penalties established by the Act for such violations.

The bill would also amend section 20(a) of the Act (21 U.S.C. 620(a)) to prohibit the importation of any carcasses, parts of carcasses, meat or meat food products derived from livestock which was not humanely handled and slaughtered.

We strongly support the basic intent of S. 3092. The humane handling and slaughter of livestock, which the bill would require, is consistent with the purpose of animal welfare laws which the Department now administers.

The compliance deadlines established in S. 3092 appear to offer sufficient time for most plants to make any changes required in their handling and slaughter procedures. In fact, most foreign and domestic slaughterhouses are already in substantial compliance. However, the Department recognizes the possibility that unique difficulties in meeting these time limits may confront some establishments, particularly State plants covered under title III of the Federal Meat Inspection Act. Most State legislatures will not reconvene until 1979, making it impossible for 11 States which participate in the title III program, but have not enacted humane slaughter legislation, to amend their laws before that time. Another 5 States include humane slaughter requirements in their inspection regulations. It is doubtful that all of these regulations would qualify as being "equal to" Federal standards should S. 3092 or similar legislation be enacted. We therefore suggest that language be added to S. 3092, allowing additional time for implementation to any State which must amend its meat inspection law. The provision should also indicate that appropriate changes must be made during the State's next legislative session. The Department also feels it would be desirable to allow the Secretary the flexibility to grant additional time extensions in exceptional situations.

We are also concerned about provisions requiring foreign countries to adopt our standards for the humane handling and slaughter of livestock. These countries might view this requirement as a nontariff barrier to trade. Given the fact that the United States is supporting a reduction in such barriers at the multilateral trade negotiations now underway in Geneva, we are extremely reluctant to endorse an action which might be inconsistent with our overall trade policy. In view of these concerns, we intend to defer to the State Department's evaluation of these provisions.

Failure to comply with humane handling and slaughter provisions would result in the imposition of penalties now applicable to other violations of the Act. Thus, enforcement activities could be handled routinely in a manner consistent with current departmental practices.

Enactment of S. 3092 would impose no additional cost upon this Department since existing personnel would easily be able to accommodate humane handling and slaughter monitoring responsibilities in their routine inspection activities.

The Office of Management and Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

BOB BERGLAND,
Secretary.

II.

In a letter to Chairman Talmadge dated June 15, 1978, the Assistant Secretary for Congressional Relations of the Department of State expressed opposition to S. 3092 on the ground that the prohibition against importation of inhumanely slaughtered or handled meat into the United States constitutes a nontariff trade barrier. The letter from the Assistant Secretary reads as follows:

DEPARTMENT OF STATE,
Washington, D.C., June 15, 1978.

Hon. HERMAN TALMADGE,
Chairman, Committee on Agriculture, Nutrition, and Forestry,
U.S. Senate.

DEAR MR. CHAIRMAN: It has come to my attention that your committee will hold hearings shortly on S. 3092, a bill which would prohibit the marketing of meat not certified to come from animals slaughtered by humane methods approved by the Department of Agriculture.

The bill would require the condemnation of meat from animals slaughtered in the United States by other than approved methods, and would prohibit the importation of meat from animals slaughtered in foreign countries by other than approved methods. To ensure that these provisions are complied with, the bill also provides for a system of inspection of slaughterhouses and certification of meat. This inspection/certification system would be similar to that which has been in effect for many years to protect the public from unhealthful meat.

The inspection of slaughterhouses and the certification of meat in the United States are matters which fall outside the area of responsibility of the Department of State. We thus defer to the judgment of the agencies directly involved, particularly the Department of Agriculture, concerning the bill's domestic effects.

There remains, however, the question of whether or not the United States should require that other countries adopt American slaughtering methods, which reflect our norms on the treatment of animals, if they are to be allowed to export to our market. We believe that the United States should not impose these requirements, and consequently we recommend against the enactment of Section 4 of the bill.

In addition to obliging foreign meat processors to observe American norms on the treatment of animals about to be slaughtered, Section 4 would in effect broaden, to encompass slaughtering methods, the existing requirement that foreign meat packers submit to inspection in their own countries by U.S. officials. This would be an exercise of

extraterritorial jurisdiction which would very likely give rise to strong opposition on the part of our trading partners.

It may be argued that the countries which sell meat to the United States have already accepted our exercise of extraterritorial jurisdiction by allowing American inspection of meat processing facilities for the purpose of seeing that meat exported to us meets U.S. standards regarding health and sanitation. This is true, but it differs from the situation which Section 4 would create in two important respects.

First, the current inspections are directly related to the health and safety of American consumers, because they are directed at the wholesomeness of the meat itself. Section 4 is directed not at the condition of the product, but at the slaughtering method. The condition of the product affects the health of American consumers, and hence is a legitimate subject of U.S. Government interest; the method of slaughter *per se* does not affect the health of our people, and hence is not a legitimate subject for our government to control beyond our borders. Further, should the method of slaughter affect the healthfulness of the meat, the meat could be kept out of the U.S. under existing procedures.

Second, when the United States signed the General Agreement on Tariffs and Trade (GATT), the United States committed itself to the principle that no new non-tariff barriers to imports should be created. The imposition of a new condition for the exportation of meat to the United States, which condition does not fall within the GATT exemption for protection of domestic public health, would undoubtedly be considered a new non-tariff barrier by our trading partners, and would subject the United States to criticism in the GATT and to the possibility of retaliation against the exports of the United States to the affected countries.

The Office of Management and Budget advises that from the standpoint of the Administration's program there is no objection to the submission of this report.

Sincerely,

DOUGLAS J. BENNET, JR.,
Assistant Secretary
for Congressional Relations.

COST ESTIMATE

I.

In accordance with section 252 of the Legislative Reorganization Act of 1970, the committee estimates that there will be no significant additional costs incurred in carrying out the provisions of S. 3092, as amended. This cost estimate is based on the fact that existing USDA personnel would be used to carry out the inspection and enforcement activities required by the bill.

II.

The committee cost estimate is in accord with the estimate made by the Congressional Budget Office. The letter from the Congressional Budget Office to Chairman Talmadge reads as follows:

CONGRESSIONAL BUDGET OFFICE,
U.S. CONGRESS,
Washington, D.C., July 25, 1978.

Hon. HERMAN E. TALMADGE,
Chairman, Committee on Agriculture, Nutrition, and Forestry, U.S. Senate, Russell Senate Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed S. 3092, the Humane Methods of Slaughter Act of 1978, as ordered reported by the Senate Committee on Agriculture, Nutrition, and Forestry, July 19, 1978.

Because inspectors are already present in the plants to which the humane slaughter requirements would be extended by this bill, no additional inspection costs would be incurred by the Government. In addition, the abolition of the existing advisory committee, as required by section 6, would result in a small decrease in Government costs.

Sincerely,

ALICE M. RIVLIN,
Director.

CHANGES IN EXISTING LAW

In compliance with subsection 4 of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

FEDERAL MEAT INSPECTION ACT

* * * * * * *

TITLE I—INSPECTION REQUIREMENTS; ADULTERATION AND MISBRANDING

* * * * * * *

SEC. 3. (*a*) That hereafter, for the purpose of preventing the use in commerce, as hereinafter provided, of meat and meat food products which are adulterated, the Secretary shall cause to be made, by inspectors appointed for that purpose, an examination and inspection of all cattle, sheep, swine, goats, horses, mules, and other equines before they shall be allowed to enter into any slaughtering, packing, meat-canning, rendering, or similar establishment, in which they are to be slaughtered and the meat and meat food products thereof are to be used in commerce; and all cattle, sheep, swine, goats, horses, mules, and other equines found on such inspection to show symptoms of disease shall be set apart and slaughtered separately from all other cattle, sheep, swine, goats, horses, mules, or other equines, and when so slaughtered the carcasses of said cattle, sheep, swine, goats, horses, mules, or other equines shall be subject to a careful examination and inspection, all as provided by the rules and regulations to be prescribed by the Secretary, as herein provided for.

"(*b*) *For the purpose of preventing the inhumane slaughtering of livestock, the Secretary shall cause to be made, by inspectors appointed*

for that purpose, an examination and inspection of the method by which cattle, sheep, swine, goats, horses, mules, and other equines are slaughtered and handled in connection with slaughter in the slaughtering establishments inspected under this Act. The Secretary may refuse to provide inspection or cause inspection to be temporarily suspended at a slaughtering establishment if the Secretary finds that any cattle, sheep, swine, goats, horses, mules, or other equines have been slaughtered or handled in connection with slaughter at such establishment by any method not in accordance with the Act of August 27, 1958 (72 Stat. 862; 7 U.S.C. 1901–1906), until the establishment furnishes assurances satisfactory to the Secretary that all slaughtering and handling in connection with slaughter of livestock shall be in accordance with such a method.

* * * * * * *

SEC. 10. No person, firm, or corporation shall, with respect to any cattle, sheep, swine, goats, horses, mules, or other equines or any carcasses, parts of carcasses, meat or meat food products of any such animals—

(a) slaughter any such animals or prepare any such articles which are capable of use as human food at any establishment preparing any such articles for commerce, except in compliance with the requirements of this Act;

(b) slaughter or handle in connection with slaughter any such animals in any manner not in accordance with the Act of August 27, 1958 (72 Stat. 862; 7 U.S.C. 1901–1906);

[(b)] *(c)* sell, transport, offer for sale or transportation, or receive for transportation, in commerce, (1) any such articles which (A) are capable of use as human food and (B) are adulterated or misbranded at the time of such sale, transportation, offer for sale or transportation, or receipt for transportation; or (2) any articles required to be inspected under this title unless they have been so inspected and passed;

[(c)] *(d)* do, with respect to any such articles which are capable of use as human food, any act while they are being transported in commerce or held for sale after such transportation, which is intended to cause or has the effect of causing such articles to be adulterated or misbranded.

* * * * * * *

SEC. 20. (a) No carcasses, parts of carcasses, meat or meat food products of cattle, sheep, swine, goats, horses, mules, or other equines which are capable of use as human food, shall be imported into the United States if such articles are adulterated or misbranded and unless they comply with all the inspection, building construction standards, and all other provisions of this Act and regulations issued thereunder applicable to such articles in commerce within the United States. *No such carcasses, parts of carcasses, meat or meat food products shall be imported into the United States unless the livestock from which they were produced was slaughtered and handled in connection with slaughter in accordance with the Act of August 27, 1958 (72 Stat. 862; 7 U.S.C. 1901–1906).* All such imported articles shall, upon entry into the United States, be deemed and treated as domestic articles subject to the other provisions of this Act and the Federal Food,

Drug, and Cosmetic Act: *Provided,* That they shall be marked and labeled as required by such regulations for imported articles: *Provided further,* That nothing in this section shall apply to any individual who purchases meat or meat products, outside the United States for his own consumption except that the total amount of such meat or meat products shall not exceed fifty pounds.

* * * * * * *

ACT OF AUGUST 27, 1958

AN ACT

To establish the use of humane methods of slaughter of livestock as a policy of the United States, and for other purpses

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress finds that the use of humane methods in the slaughter of livestock prevents needless suffering; results in safer and better working conditions for persons engaged in the slaughtering industry; brings about improvement of products and economies in slaughtering operations; and produces other benefits for producers, processors, andc onsumers which tend to expedite an orderly flow of livestock and livestock products in interstate and foreign commerce. It is therefore declared to be the policy of the United States that the slaughtering of livestock and the handling of livestock in connection with slaughter shall be carried out only by humane methods.

SEC. 2. No method of slaughtering or handling in connection with slaughtering shall be deemed to comply with the public policy of the United States unless it is humane. Either of the following two methods of slaughtering and handling are hereby found to be humane:

(a) in the case of cattle, calves, horses, mules, sheep, swine, and other livestock, all animals are rendered insensible to pain by a single blow or gunshot or an electrical, chemical, or other means that is rapid and effective, before being shackled, hoisted, thrown, cast, or cut; or

(b) by slaughtering in accordance with the ritual requirements of the Jewish faith or any other religious faith that prescribes a method of slaughter whereby the animal suffers loss of consciousness by anemia of the brain caused by the simultaneous and instantaneous severance of the carotid arteries with a sharp instrument *and handling in connection with such slaughtering.*

[SEC. 3. The public policy declared herein shall be taken into consideration by all agencies of the Federal Government in connection with all procurement and price support programs and operations and after June 30, 1960, no agency or instrumentality of the United States shall contract for or procure any livestock products produced or processed by any slaughterer or processor which in any of its plants or in any plants of any slaughterer or processor with which it is affiliated slaughters or handles in connection with slaughter livestock by any methods other than methods designated and approved by the Secretary of Agriculture (hereinafter referred to as the Secretary) pursuant to section 4 hereof: *Provided,* That during the period of any national emergency declared by the President or the Congress,

the limitations on procurement required by this section may be modified by the President to the extent determined by him to be necessary to meet essential procurement needs during such emergency. For the purposes of this section a slaughterer or processor shall be deemed to be affiliated with another slaughterer or processor if it controls, is controlled by, or is under common control with, such other slaughterer or processor. After June 30, 1960, each supplier from which any livestock products are procured by any agency of the Federal Government shall be required by such agency to make such statement of eligibility under this section to supply such livestock products as, if false, will subject the maker thereof to prosecution, title 18, United States Code, section 287.]

SEC. 4. In furtherance of the policy expressed herein the Secretary is authorized and directed—

(a) to conduct, assist, and foster research, investigation, and experimentation to develop and determine methods of slaughter and the handling of livestock in connection with slaughter which are practicable with reference to the speed and scope of slaughtering operations and humane with reference to other existing methods and then current scientific knowledge; *and*

(b) on or before March 1, 1959, and at such times thereafter as he deems advisable, to designate methods of slaughter and of handling in connection with slaughter which, with respect to each species of livestock, conform to the policy stated herein. If he deems it more effective, the Secretary may make any such designation by designating methods which are not in conformity with such policy. Designations by the Secretary subsequent to March 1, 1959, shall become effective [for purposes of section 3 hereof] 180 days after their publication in the Federal Register[;].

[(c) to provide suitable means of identifying the carcasses of animals inspected and passed under the Meat Inspection Act (21 U.S.C. 71 and the following) that have been slaughtered in accordance with the public policy declared herein. Handling in connection with such slaughtering which necessarily accompanies the method of slaughter described in subsection (b) of this section shall be deemed to comply with the public policy specified by this section.]

[SEC. 5. To assist in implementing the provisions of section 4, the Secretary is authorized to establish an advisory committee. The functions of the Advisory Committee shall be to consult with the Secretary and other appropriate officials of the Department of Agriculture and to make recommendations relative to (a) the research authorized in section 4; (b) obtaining the cooperation of the public, producers, farm organizations, industry groups, humane associations, and Federal and State agencies in the furtherance of such research and the adoption of improved methods; and (c) the designations required by section 4. The Committee shall be composed of twelve members, of whom one shall be an officer or employee of the Department of Agriculture designated by the Secretary (who shall serve as Chairman); two shall be representatives of national organizations of slaughterers; one shall be a representative of the trade-union movement engaged in packinghouse work; one shall be a representative of the general public; two shall be representatives of livestock growers

one shall be a representative of the poultry industry; two shall be representatives of national organizations of the humane movement; one shall be a represenatative of a national professional veterinary organization; and one shall be a person familiar with the requirements of religious faiths with respect to slaughter. The Department of Agriculture shall assist the Committee with such research personnel and facilities as the Department can make available. Committee members other than the Chairman shall not be deemed to be employees of the United States and are not entitled to compensation but the Secretary is authorized to allow their travel expenses and subsistence expenses in connection with their attendance at regular or special meetings of the Committee. The Committee shall meet at least once each year and at the call of the Secretary and shall from time to time submit to the Secretary such reports and recommendations with respect to new or improved methods as it believes should be taken into consideration by him in making the designations required by section 4 and the Secretary shall make all such reports available to the public.]

SEC. 6. Nothing in this Act shall be construed to prohibit, abridge or in any way hinder the religious freedom of any person or group. Notwithstanding any other provision of this Act, in order to protect freedom of religion, ritual slaughter and the handling or other preparation of livestock for ritual slaughter are exempted from the terms of this Act. For the purposes of this section the term "ritual slaughter" means slaughter in accordance with section 2(b).

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